

City Clerk File No. Ord. 14.120

Agenda No. 3.A 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



## ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE  
offered and moved adoption of the following ordinance:

CITY ORDINANCE 14.120

**TITLE: ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY  
ADOPTING AMENDMENTS TO THE TIDEWATER BASIN REDEVELOPMENT PLAN TO  
CREATE A MIXED USE DISTRICT**

**WHEREAS**, the Municipal Council of the City of Jersey City adopted the Tidewater Basin Redevelopment Plan in November of 1999, and amended the Plan numerous times subsequently, most recently on April 20, 2010; and

**WHEREAS**, the existing Plan has an Office/Residential District which does not allow the mix of uses and amenities that the existing neighborhood would benefit from; and

**WHEREAS**, creating a new Mixed Use Zone will allow for an expanded list of uses with appropriate bulk and design standards to benefit the community; and

**WHEREAS**, the zone is located both adjacent to an HBLRT station and at a point of connection to Liberty Harbor North, necessitating pedestrian access through and around the site; and

**WHEREAS**, in order to provide this access, allow for a much-needed JCMUA easement, and add additional public plaza space, the Plan allows for a height bonus of 8 additional stories in exchange for easement and plaza space, as well as the implementation of Green Building measures;

**WHEREAS**, the Planning Board, at its meeting of August 26, 2014, determined that the Tidewater Basin Redevelopment Plan should be amended to create a new Mixed use Zone to allow for additional permitted uses and the option for additional height in exchange for the aforementioned benefits; and

**WHEREAS**, a copy of the Planning Board's recommended amendments to the Tidewater Basin Redevelopment Plan is attached hereto, and made a part hereof, and is available for public inspection at the office of the City Clerk, City Hall, 280 Grove Street, Jersey City, NJ;

**NOW, THEREFORE, BE IT ORDAINED** by the Municipal Council of the City of Jersey City that the aforementioned amendments to the Tidewater Basin Redevelopment Plan be, and hereby are, adopted.

**BE IT FURTHER ORDAINED THAT:**

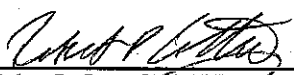
- A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- B. This ordinance shall be a part of the Jersey City Code as though codified and set forth fully herein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- C. This ordinance shall take effect at the time and in the manner as provided by law.
- D. The City Clerk and the Corporation Council be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible repealers of existing provisions.
- E. The City Planning Division is hereby directed to give notice at least ten days prior to the hearing on the adoption of this Ordinance to the Hudson County Planning board and to all other persons entitled thereto pursuant to N.J.S. 40:55D-15 and N.J.S. 40:55D-63 (if required). Upon the adoption of this Ordinance after public hearing thereon, the City Clerk is directed to publish notice of the passage thereof and to file a copy of the Ordinance as finally adopted with the Hudson County Planning Board as required by N.J.S. 40:55D-16. The clerk shall also forthwith transmit a copy of this Ordinance after final passage to the Municipal Tax Assessor as required by N.J.S. 40:49-2.1.

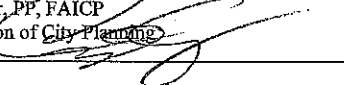
APPROVED AS TO LEGAL FORM

Corporation Counsel

Certification Required ☐

Not Required ☐

  
Robert D. Cotter, PP, FAICP

Director, Division of City Planning  
APPROVED: 

APPROVED: \_\_\_\_\_

Business Administrator

**RESOLUTION FACT SHEET – NON-CONTRACTUAL**

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

**Full Title of Ordinance/Resolution**

**ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY ADOPTING AMENDMENTS TO THE TIDEWATER BASIN REDEVELOPMENT PLAN TO CREATE A MIXED USE DISTRICT**

**Initiator**

Department/Division	HEDC	City Planning
Name/Title	Robert Cotter, PP, AICP	Director
Phone/email	201-547-5010	bobbyc@jcnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

**Resolution Purpose**

The proposed amendments create a Mixed Use District to modify the existing Office/Residential District. This will create an expanded list of permitted uses to help activate the neighborhood. Bulk and design standards typical to the area have been established. Additionally, a height bonus provision has been proposed which will allow for an additional eight stories of height in exchange for a public plaza, green building, and a necessary easement for JCMUA.

 9/17/2014  
I certify that all the facts presented herein are accurate.

  
Signature of Department Director

9/17/14  
Date

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**Department of Housing, Economic Development & Commerce**  
**Division of City Planning**



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**Inter-Office Memorandum**

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**DATE:** August 27, 2014

**TO:** Council President Lavarro, Anthony Cruz, Bob Cotter

**FROM:** Kristin J. Russell, PP, AICP

**SUBJECT:** Tidewater Basin Redevelopment Plan amendment

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The amendments before you for the Tidewater Basin Redevelopment Area are requested to expand the zoning in the Office /Residential Subdistrict. This subdistrict is located along Van Vorst St. South of Sussex Street, as you can see on the Land Use Map.

The proposed changes include the renaming of this district to "Mixed Use" to reflect the expanded list of uses permitted. Presently, the zone allows only office and residential uses. The amendment would add uses such as retail, cafes, restaurants, etc. to that list, reflecting the changing needs of the community as it grows and becomes more active.

Typical bulk standards – setback, parking, lot area – have been established which will allow for buildings to reach 7 stories with parking at a rate of 0.6 spaces per unit.

However, a height bonus provision has been included which would allow for an additional 8 stories.

There are several reasons that this is good planning. First, the subdistrict sits adjacent to an HBLRT station as well as an ideal connection points for pedestrians between Van Vorst Park and Liberty Harbor North. Access through and around the site is critical.

Second, public park and plaza space in the area is limited, and creating such a space on this property would activate the area for residents and visitors.

Third, the JCMUA needs a large utility easement through the site, which would limit development above.

As a solution to all of these problems, the zoning has been written to allow this additional height in exchange for several community and City benefits. The applicant will grant the JCMUA easement, which is a tremendous help to the City. Above it, a

10,000 sf public plaza will be created, providing a place for the community to gather and an access point through the neighborhood to the Light Rail and Liberty Harbor North. The applicant will also be required to build in accordance with Green Building Standards, guaranteeing more environmentally responsible development.

It is the opinion of Planning Staff that these benefits are a fair exchange for the additional height that the applicant will have the *option* to take advantage of. Added public open space, municipal utility access, and green building are all very valuable features that should be sought when possible.



Summary Sheet:

**ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY  
CITY ADOPTING AMENDMENTS TO THE TIDEWATER BASIN  
REDEVELOPMENT PLAN TO CREATE A MIXED USE DISTRICT**

The proposed amendments create a Mixed Use District to modify the existing Office/Residential District. This will create an expanded list of permitted uses to help activate the neighborhood. Bulk and design standards typical to the area have been established. Additionally, a height bonus provision has been proposed which will allow for an additional eight stories of height in exchange for a public plaza, green building, and a necessary easement for JCMUA.

# **TIDEWATER BASIN REDEVELOPMENT PLAN**

**November 10, 1999**

Amended June 27, 2007: Ord. 07-109

Amended Sept 9, 2009: Ord. 09-092

Amended March 24, 2010: Ord. 10-036

Amended April 28, 2010: Ord. 10-053

Block & Lot Updates: October 25, 2012

*Proposed 08/26/14*

**CITY OF JERSEY CITY  
DIVISION OF CITY PLANNING**

## **I. Introduction**

The purpose of the Tidewater Basin Redevelopment Plan (hereinafter referred to as the “Plan”), is to provide for comprehensive redevelopment designed to ensure coordinated and harmonious growth within the Tidewater Basin Redevelopment Plan Area (hereinafter referred to as the “Area”).

The redevelopment plan takes into consideration the surrounding neighborhoods and takes into account the character and nature of current and proposed land-uses. Bordering the Tidewater Basin area to the east is the Colgate Redevelopment Area. Until recently the Colgate area was dominated by vacant lots and unused industrial buildings. It is planned to become a mixed use area with office, commercial and residential uses. This area is now active with construction as this project moves forward. The Paulus Hook Historic District, a quiet neighborhood of nineteenth century brownstones, borders the Tidewater Basin area to the north and to the east. The Liberty Harbor North Redevelopment Plan Area borders the Area to the west. Liberty Harbor North is planned as a predominantly residential, waterfront community.

A common element throughout all of these neighborhoods and the Area is the Hudson-Bergen Light Rail Transit System which will connect them all by means of a modern trolley service, and the Hudson River Waterfront Walkway, which connects these neighborhoods by means of a pedestrian ribbon park along the water’s edge.

## **II. Boundary Description**

See the Boundary Map for the boundary illustration.

## **III. Redevelopment Objectives and Minimum Standards**

All new development, rehabilitation, or adaptive re-use must conform to, and be consistent with the following objectives and minimum standards:

- A. At street level, human-scale development to compliment the neighboring Paulus Hook Historic District is required. New development, especially infill housing, shall be consistent in height, scale, material and design with the predominant form of housing – the brick rowhouse – of the neighborhood.
- B. Eliminate incongruous land uses by reinforcing, through acquisition and demolition, if necessary, the dominant residential pattern of the neighborhood.
- C. Encourage the elimination of obsolete and deleterious land uses and structures and the rehabilitation of deteriorated structures, including dilapidated piers and bulk-heading.
- D. Improve vehicular and pedestrian traffic through the re-establishment of a public neighborhood street grid, while improving the circulation through the neighborhood by addressing traffic direction, R-O-W width, cartway width and sidewalk design to discourage vehicular through traffic while improving pedestrian and bicycle access and by incorporating into all waterfront projects the public pedestrian walkway system known as the Hudson River Waterfront Walkway.
- E. Provide for decorative streetscape and site improvements for the beautification of the

redevelopment plan area and adjacent neighborhoods.

- F. Provide for the enhancement of the Paulus Hook Historic District through improvement of its waterfront access, redevelopment of industrial sites and historically sensitive treatment of vacant sites within and immediately contiguous to the historic district.
- G. Encourage the preservation and promotion of the buildings contributing to the area's historic and cultural fabric, and the protection and re-establishment of view corridors along existing and new public streets to accentuate views of Manhattan Island, the Statue of Liberty, Ellis Island and Liberty State Park.
- H. Develop a network of private and public open space nodes along the Hudson River Waterfront Walkway and other districts. These spaces which shall be designed to enhance light and air in the neighborhoods, improve pedestrian circulation, act as a catalyst for residential and retail development, provide a sense of place, and help to improve valuable and desirable vistas.

#### IV. Types of Proposed Redevelopment Actions

This plan will improve and upgrade the Tidewater Basin Redevelopment Area substantially through a combination of redevelopment actions. These include, but are not limited to:

- Clearance of dilapidated, deteriorated, obsolete or under-utilized structures.
- Assembly of vacant and/or underutilized land into developable parcels.
- Construction of new structures and complementary facilities.
- Provisions for public infrastructure necessary to service and support the new development, including separated storm and sanitary sewers, through special assessment, if necessary, so that the low-lying areas of the Redevelopment Area can experience improved drainage as a result of this Plan's implementation.
- Designation of pedestrian and vehicular Rights of Way to be improved in conjunction with project area development and dedicated to the City.

#### V. Redevelopment Regulations and Guidelines

- A. The following guidelines apply to all development within the Redevelopment Area and are mandatory.
  - 1. All structures that share a property line with a historic district or property must be compatible to the design of the historic district property design, including, but not limited to: building height, scale, setback, fenestration, window and door placement, construction material, roofline and shape, and colors.
  - 2. All infill housing must complement the existing indigenous housing on the street, especially with regard to height, scale, materials, rooflines and setbacks.
  - 3. All structures shall be designed to have an attractive and finished appearance from all vantage points and utilize the same high quality material on all facades of the building.

4. Signage:
  - No billboards or junior billboards permitted.
  - No back lighted signs or flashing lights.
  - Signage shall be in proportion to the structure
  - Signage shall be of quality material
5. Standard chain link fencing and/or barbed wire is prohibited, except that chain link fencing may be utilized during construction.
6. View corridors along the existing street network and extended network made part of this redevelopment plan shall be preserved, to maximize sight lines to the Manhattan Skyline, the Statue of Liberty, Ellis Island and Liberty State Park.
7. All utility distribution lines and utility service connections from such lines to the project area's individual uses shall be located underground. All meters for utility service shall be located inside the building they serve and shall not be visible from the street (remote readers are permitted, however, to be located on the exterior of structures).
8. All mechanical equipment located on the roof of any building must be enclosed by the building's façade, which must be consistent in design with the rest of the building. Where roofs can be looked down upon from adjacent buildings, a "roofscape" plan must be developed and submitted for Planning Board approval. All electrical communications equipment shall be located in such a way that it does not adversely impact the appearance of the building or site, nor create objectionable views as seen from surrounding structures or public areas.
9. ~~All development containing commercial uses, and all residential apartment projects of more than 3 units, shall provide facilities to secure bicycles in the public sidewalk area. All residential developments shall provide bicycle lockers within the parking areas or common areas of the building at a ratio of one locker for every two units.~~

B. The following regulations apply to all development and are mandatory.

1. **Façade Materials:** With the exception of Penthouses as outlined in §VII.E below, the predominant building material for exterior cladding shall be brick, and the façade shall consist of no more than three materials, textures or colors.
2. **Façade Articulation:** Buildings shall consist of three horizontal elements: the base, a middle, and a top, which shall be achieved through the use of different materials, colors or surface treatments.
3. **Rooflines:** All roofs shall be flat, and may contain roof decks for recreation purposes. Access structures, such as staircase bulkheads or elevator rooms may be provided to allow access such rooftop areas. The bulk of such access structures shall be the minimum necessary to meet building codes and shall not be considered as part of the height of the structure. No habitable space is allowed in such access structures. Color and materials shall compliment that of the principal structure.
4. **Cornices:** All buildings shall incorporate a cornice feature at the roofline, which may not be constructed of lightweight material such as plastic, and which should be of natural materials such as wood, masonry or metal. Fiberglass reproduction cornices are acceptable provided they are well made and true to original form.
5. **Common Elements:** All projects, as part of the site plan approval process, shall identify and incorporate at least three (3) elements that are similar to adjacent structures, such as the type and color of brick, or the height and scale of the cornice, so that there is connectivity across time as the Area builds out.
6. **Stoops and Stairs:** All residential developments shall incorporate stoops and stairs along

all frontages where stoops and stairs are the established mode on the same or opposite side of the street.

7. **Residential Heights Above Sidewalk:** All residential uses located on the first floor or story shall maintain visual separation to maintain a sense of privacy. The floor of such residences shall be at least two feet higher than the adjacent public sidewalk or walkway, and the window sills of all windows on such frontages shall be at least five feet higher than the adjacent public sidewalk or walkway. Wheelchair access may be provided by means of lifts or internal ramps.
8. **Story Height:** *With the exception of parking levels and mechanical areas, t*The maximum height for any story shall be fourteen feet and the minimum height shall be nine feet, except that the first story height shall be a minimum of ten feet, unless the floor is raised at least three feet above the sidewalk level. *Except for parking levels and mechanical areas, t*The first story height shall be taller than the stories above it, either by raising the first story from grade level with a stoop, or by raising the ceiling height. Maximum height for penthouses, where permitted, is twelve (12) feet.
9. **Shopfronts:** All shopfronts shall be a minimum of 75% glass or void, shall be individually designed, and shall have three distinct elements: the storefront, the entrance and the sign band. Each retail storefront shall be allowed one sign and one blade sign, which shall be located in a sign band area. If lighted, only direct lighting is permitted.
10. **Fencing:** All front yard fencing shall consist of mild steel "wrought iron" style fencing, painted black, and consisting of solid pickets a minimum 5/8 inch thick which fully penetrate all horizontal rails and are capped with decorative elements. Rear yards may be fenced with wooden fences, provided such fencing shows a "good" side on both sides.
11. **Balconies and Outdoor Space:** Balconies shall be recessed into, rather than projecting out of, the façade. *At least 25 percent of the units i*~~n~~ developments of 4 units or more, *at least 25 percent of the units* shall contain a balcony *or, as an alternative, at least 20,000 square feet of any combination of private, common, or public access outdoor space shall be provided for the entire development.*
12. **Sidewalks:** All sidewalks shall be tinted "French Gray" and contain an admixture of mica. All sidewalks shall be a minimum of 10 feet wide, which may include the planting strip, and may be located within the property line, if necessary, to achieve the required ten feet minimum. Minimum cross sections shall be as follows: Curb: 8 inches / Planting strip: 28 inches / Sidewalk: 7 feet. The planting strip, if not vegetative, will be constructed of bricks or cobblestone between the tree wells.

*The Planning Board may grant a waiver for superior design which relates to adjacent architecture or other public purpose.*

13. **Landscaping:** All landscaped areas shall be irrigated. Street trees are required to be planted along all streets, within a planting strip, which is within the first 36 inches inboard of the curb face. All trees shall be a minimum 3.0 to 3.5 inches caliper. All trees shall be protected by a suspended tree grate which must be approximately 3 by 6 feet, and be of two halves, and be made so as to facilitate growth of the tree by having easily removed sections. A minimum of 10 percent of every lot shall be landscaped with living vegetative material, which shall provide more than 90 percent coverage after one growing season. Mulch is not considered "living vegetative material."
14. **Accessibility:** All buildings three stories and higher must have an elevator.
15. **Development Parcels** are required as follows:  
Parcel 1: Block 14205, Lots 22, 23, 24;

Parcel 2: Block 14204, Lot 8;

Parcel 3: Block 14201, Lot 1;

Parcel 4: Block 14205, Lot 21

Any redevelopment on these parcels shall include all properties within the designated development parcel.

## **VI. Parking Standards and Requirements**

1. Where not otherwise regulated or prohibited in Plan Subdistricts, all residential development must provide parking at a minimum ratio of one space for every unit containing up to two bedrooms, and two spaces for every unit containing more than two bedrooms. All such spaces must be tied to the residential lease or deed, unless otherwise authorized by the Planning Board pursuant to a Community Benefit Parking Plan and Developer's Agreement referenced under Section VII herein. An additional number of spaces, equal to 10% of the number required by the above calculations shall be required for guest and staff parking.
2. **Where not otherwise regulated or prohibited in Plan Subdistricts,** parking garages must be either under the principal building(s) of an individual project and have an elevation above the average grade of the public sidewalk abutting the project of no more than one-half the floor to floor height of the garage/first occupied floor, or, if at ground level, be wrapped and completely surrounded by and be covered from view by the principal use building.
3. Parking at grade level, in Subdistricts where permitted, must be screened and not appear readily visible from street level. The use of brick walls, landscaped berms and evergreen hedges (in combination or singularly) is the preferred means of achieving this requirement. The Planning Board may allow other, equally appropriate means of screening parking, at their complete discretion.
4. Neither at-grade exposed parking, nor parking as a principal use are permitted.
5. No unimproved lots may be used for off-street parking, even on an interim basis. All lots used for construction workers' parking shall be improved to the satisfaction of the Planning Board, and must, at a minimum, be covered with crushed stone and gravel to prevent mud from being tracked into the streets and sewers, and be fenced. Chain link is permitted in such cases where the parking area will only be used for the duration of the construction activity it serves.

## **VII. Land Use District Standards**

### **A. Legacy District**

1. This district contains all of Block 14405. It is currently approved for 324 dwelling units in four story structures with an additional story of parking under the building and fifth floor mezzanine space provided on the interior courtyards. These buildings are approved not to exceed 65 feet in height, are predominantly comprised of brick cladding, have peaked roofs, some individual entries and stoops, and balconies. This Redevelopment Plan establishes the current zoning approval, as approved by the Zoning Board of Adjustment in their resolution of January 14, 1999, as the land use regulations and standards for this district. Nothing contained herein is intended to negate, modify, nor amend that approval. However, the referenced approval shall be the maximum development allowed within this district

2. Minor alterations in site plan and façade characteristics may be permitted by the Planning Board provided such alterations are consistent with the redevelopment regulations and parking standards of this Plan. Any changes not consistent with this Plan are cognizable under a deviation application, and will be judged on their merits.

**B. Portside District**

1. This district contains Lot 1 of Block 15902, an area of 5.35 Acres as per the City's Tax Assessor's maps. It has been approved and is partially developed as *Portside*, a mixed-use development consisting of a maximum of 527 dwelling units, a maximum of 753 parking spaces, and approximately 62,000 square feet of commercial space. Phases one and two of this three phase project have been completed. This Redevelopment Plan establishes the current zoning approval, as first approved by the Zoning Board of Adjustment in their resolution of March 3, 1986, which approvals were amended several times, as the land use regulations and standards for this district. Nothing contained herein is intended to negate, modify nor amend that approval. However, the referenced approval shall be the maximum development allowed within this district.
2. Minor alterations in site plan and façade characteristics may be permitted by the Planning Board provided such alterations are consistent with the redevelopment regulations and parking standards of this Plan. Any changes not consistent with this Plan are cognizable under a deviation application, and will be judged on their merits.

**C. Waterfront District**

1. This district lies between Warren Street and the extension of Van Vorst Street and runs from Morris Street to the Tidewater Basin. A significant portion of this district is located on the water's edge, where a marina is permitted and encouraged to be developed as part of a larger, predominantly residential development. The Hudson River Waterfront Walkway is required for all development located on property that abuts the water's edge. The minimum standards of the New Jersey Department of Environmental Protection (DEP) for the Hudson River Waterfront Walkway are adopted herein by reference, and are considered to be a part of this Redevelopment Plan.
2. Permitted Uses
  - a. Residential
  - b. mixed-uses consisting of residential uses mixed with retail sales and services, including child day care, restaurants, and offices
  - c. marina and related uses on the underwater parcels.
3. Accessory uses
  - a. off-street parking
  - b. recreation areas
  - c. day care facilities
  - d. access to the marina.
4. Maximum Heights
  - a. Heights shall not exceed six stories and 75 feet on Blocks 15901 and 14205.
  - b. Heights shall not exceed four stories and 50 feet on Block 14204. However, a height bonus of up to an additional 30 feet and three stories, for a maximum height of 80 feet and seven stories, may be permitted where the Planning Board approves a community benefit parking plan ("Community Benefit Parking Plan") and enters into an agreement with a developer outlining such Community Benefit Parking Plan ("Developer's



Agreement”), providing for the development of accessory off-street parking on the site. Any such approved Community Benefit Parking Plan and Developer’s Agreement must comply with the Parking Standards and Requirements set forth in Section VI herein, with the exception that a 10% additional number of spaces for guest and staff parking, referenced in Section VI(1), shall not be required. Any approved Community Benefit Parking Plan and Developer’s Agreement must require that additional parking of at least 50 parking spaces above the minimum parking standard shall be provided and made available to residents of the Tidewater Basin Redevelopment Plan Area, which shall not include residents of the proposed development. The Community Benefit Parking Plan and Developer’s Agreement may permit valet parking.

5. Setbacks

- a. ~~All development will be setback a minimum of eight feet and a maximum of 15 feet of existing or proposed street lines, including Dudley Street as depicted on the Circulation Map.~~ Development containing commercial space on the ground floor may locate up to the street **property** line for the length of the entire development. ***Development with 100% ground floor residential must set back a minimum of 5 feet from the front property line.*** Residential buildings fronting on the required waterfront walkway shall set back a least ten feet from the walkway easement, which setback area may be landscaped and fenced. All facades facing onto the waterfront walkway shall be designed to appear as front entrances and not back yards.

6. Densities

- a. 75 dwelling units per acre for developments that are 100 percent residential. Mixed use projects shall have their residential density reduced by the number of units that could have been built in the commercial space given the average square footage of a residential unit within the development not including any common areas. However, a density bonus of up to an additional 100 units per acre, for a maximum density of 175 units per acre, may be permitted where the following is achieved:
  - 1) The Planning Board approves a Community Benefit Parking Plan and enters into a Developer’s Agreement, consistent with the requirements of Section VII C 4(b) above.
  - 2) The developer incorporates within the development at least one "green" building component, which shall consist of the installation of a solar panel array covering a minimum of 10% of the roof area above the highest residential floor or 5% of the footprint of any proposed building, whichever is greater, for the purpose of converting sunlight into useable electricity
  - 3) The developer agrees that through-the-wall heat pumps will not be installed within any first or second floor residential units that front on a public street.

D. **Historic Buffer District**

1. This district is designed to compliment and maintain the historic district streetscape and pattern of land uses. Design standards are established to ensure development which is appropriate to be located adjacent to a National Register Historic District. The area includes portions of Block 14203 and Block 14205 (lots 9, 10 (partial), 11, 12, and 13). (Please refer to the Land Use Map for identification of the Zoning Districts’ boundaries.) Any development project that has legally valid approvals at the time this Plan is adopted

by the Jersey City Municipal Council shall be considered to have established the Land Use Standards for such project, the following notwithstanding, provided, however, that such standards shall become the maximum development potential for such project sites unless the standards below provide greater development potential.

2. Principal permitted uses
  - a) One, two and three family attached dwellings
  - b) Recreation and open space
3. Accessory Uses
  - a. Off-street parking, conforming with plan standards
  - b. Fences and railings
  - c. Home occupations
4. Maximum Height
  - a. 4 stories, not to exceed 45 feet, provided that the maximum height shall not exceed the average height of the existing structures immediately adjacent and within the same block or across the street. All structures shall be of a scale and design that mirrors that of the historic structures across the street.
5. Minimum lot size
  - a.) Interior lot - 2000 square feet
  - b.) Corner lot - 2400 square feet
  - c.) Minimum lot sizes may be reduced by an equivalent amount of lot area dedicated to any rear alleyway.
6. Maximum Lot Coverage:
  - a.) 75%, except that under building parking garages shall not be considered as building coverage, provided that the area of such garages covered by a principal use building shall be bound by the 75% maximum coverage rule, and the remaining area shall be covered by landscaped areas, sidewalks, stairs, walls and/or recreation areas.
  - b.) 80% in the case of development that provides parking structures surrounded along all public rights-of-way by principal use buildings
  - c.) recreation and open space may cover 100% of the lot area
7. Setbacks:
  - a.) Front: 5 feet minimum, 15 feet maximum, or in the case of a block of continuous structures of more than 20 years old, the setback shall line up with the contiguous existing properties on the block.
  - b.) Rear Yards: Interior lots – 15 feet  
Corner lots – none
8. Parking:
  - a.) Residential: a minimum of 1 space per dwelling unit and a maximum of 2 spaces per dwelling unit, accessed from the rear of the property, and which may be provided in free standing garage located at the rear.
  - b.) All parking must be covered and under the building and at least four feet below average sidewalk grade adjacent to the principal structure or, if at grade or above, be located within and be wrapped by the principal structure so as to not be visible from the public view.
  - c.) If rear access is not possible, or would severely compromise the architectural integrity and historic appropriateness of the development the parking requirements may be waived, at the sole discretion of the Planning Board.
9. Design Standards
  - a.) Building design of this district shall be compatible with the Paulus Hook historic district structures. Building height, width, mass and proportion are important

elements of the historic district. All building facades will feature decorative elements harmonious with the architecture of the historic district including, but not exclusive to lintels, decorative brickwork, cornices, railings, light fixtures, doors and doorways.

- b.) Buildings in the redevelopment area that also are part of the Paulus Hook historic district must follow the Jersey City Historic Preservation Commission Regulations for Alterations and Additions to buildings and New Construction in Historic Districts.
- c.) Openings on Frontal Facades: The width and height of windows, doors, and entries must harmonize in scale and proportion with the width and height of windows, doors, and entries of buildings and structures of historic significance in the surrounding environment.
- d.) Relationship of Unbroken Planes to Voids (i.e., Punctured Planes) in Front Facades: The relationship of unbroken planes (i.e. walls) to voids (i.e., windows and doors) on the facade of a building or structure should be aesthetically harmonious with that of buildings and structures of historic significance in the surrounding environment.
- e.) Roof forms must be honored. In new construction, designers must take care to paradigmatically honor the existing historic roof forms and slopes of the area so as not to violate the aesthetic harmony of the whole.
- f.) Building materials: All new structures must be constructed of high quality masonry materials.
- g.) Fences: Permitted are decorative tubular steel, wrought iron, wooden board on board, or board on baton.
- h.) Rehabilitation: The rehabilitation of historically significant structures (of 70 years or older) shall follow the historic district guidelines for rehabilitation to ensure compatibility within the neighborhood. Required of rehabilitation are that: Historic store fronts be preserved; Historic features are not removed, covered or converted; Doorway and window size cannot be diminished.
- i.) Additions: Building additions which add height shall not be visible from the street frontage of the structure and shall not exceed building coverage standards.
- j.) Landscaping: Front yards are to be attractively landscaped and at least one 3"-3.5" caliper tree shall be planted curbside for every 25 feet of frontage.
- k.) Signs may not exceed two square feet, and must be of natural materials.

#### **E. Grand and Marin District**

This district is designed to provide space for athletic fields, open space, recreation and educational facilities at the corner of Marin and Grand Streets.

- 1. Principal Permitted Uses
  - a. Outdoor recreation and improved open space
  - b. Athletic facilities
  - c. Educational facilities
  - d. Residential above the ground floor
  - e. Ground floor retail on corner properties
  - f. Ground floor restaurant, categories one and two as defined by the Land Development Ordinance, on corner properties
  - g. Mixed uses of the above
- 2. Accessory Uses

- a. Off-street parking conforming with plan standards
  - b. Fences and railings
  - c. Signs, not to exceed 12 square feet, and not to be internally illuminated
3. Maximum Height:
  - a. 4 stories and forty-five (45) feet
  - b. One additional penthouse story, not to exceed 12 (twelve) feet for a total of fifty-seven (57) feet, and compliant with the standards outlined in §VII.E(7) below, is permitted on corner lots.
4. Maximum Lot Coverage
  - a. Seventy percent (70%)
5. Setbacks:
  - a. Maximum Front yard – Zero (0) feet
  - b. Maximum Corner Side yard – Zero (0) feet
  - c. Minimum Side yard – Zero (0) feet, except where side windows are proposed to be located, in which case six (6) feet
  - d. Minimum Rear yard – Thirty (30) feet
6. Parking & Loading
  - a. Parking is prohibited
  - b. One garaged loading space per building is permitted, provided that access to this garage is not from Grand Street.
7. Penthouses (as permitted in §E(3.a) above) on corner lots
  - a. Penthouses must be set back five (5) feet from all streetfront facades
  - b. Penthouses may not exceed twelve (12) feet in height
  - c. Penthouses must be constructed primarily of glass, with metal or other modern elements permitted as details.
  - d. Penthouses must have a flat roof
8. Buffering
  - a. All permitted principal uses must be adequately buffered from adjoining residential uses, through the use of a five feet wide evergreen hedge-row, of a species that will grow tall and can be trained (clipped) into a dense evergreen hedge, and contain fencing, which must be located on the non-residential side of the landscaped buffer.
9. All other requirements shall be as regulated in Sub-Section D. Historic Buffer District

**F. ~~Office/Residential~~ Mixed Use District**

This district fronts on Van Vorst Street, and contains several sites that were predominantly historically used for industrial purposes. Re-use of these sites for ~~commercial~~ residential purposes is favored for feasibility reasons, ~~although residential uses are permitted~~ and because of the strong demand for such residential uses. **Mixed use development is also permitted to service the existing and future residential development within the district.**

1. Permitted Principal Uses
  - a. Residential
  - b. Ground floor Office
  - c. Ground Floor Retail
  - d. Ground floor cafes, nightclubs, and bars
  - e. Ground floor restaurants, categories 1 and 2
  - f. Parks, pedestrian and bicycle paths, open space, plazas
  - g. Child Care and Day Care Centers

- a. Off-street parking conforming with plan standards
  - b. Health clubs serving units
  - c. Residential amenities
  - d. Fences and railings
  - e. Home occupations
  - f. Signs
- Maximum Height
  - The maximum height shall be six seven (7) stories and 75 eighty-three (83) feet.
- Minimum Lot Size
  - Interior lot – 2,000 square feet
  - Corner lot – 2,400 square feet
- Maximum Lot coverage – 100%
- Landscaping - Required 10% landscaping may be provided in landscaped planting areas, green roof plantings, and raised planters. If a project is completed in phases, the calculation may be calculated over the entire development site as a whole.
- Minimum Setbacks

None required
- Stepbacks are required along Van Vorst Street between Morris and Sussex Streets for buildings utilizing the height bonus.
  - At the 7<sup>th</sup> story, a 10 foot stepback from the ground level façade is required
  - At the 8<sup>th</sup> story, a 20 foot stepback from the ground level façade is required
  - At the 9<sup>th</sup> story, a 30 foot stepback from the ground level façade is required
  - Notwithstanding the foregoing, at the corner building on Sussex and Van Vorst Streets, only one stepback is required. It is to be located at the 7<sup>th</sup> story and must have a minimum stepback of 25 feet from the ground level façade.
- Minimum Parking
  - Residential – 0.6 spaces per unit. There shall be no lease/deed parking requirements or guest/staff parking requirements.
  - Retail, restaurants, cafes, nightclubs, and bars – 0.5 spaces per 1,000 square feet of floor area
  - Office – 0 spaces required

**Where a project is developed in phases, the parking and loading constructed with phase 1 must meet or exceed the parking and loading requirements for that phase. Required parking and loading for the entire project may be constructed in Phase I.**

***Valet parking is permitted.***

**Maximum driveway width: 12 feet one way, 20 feet two way**

10. **Loading** Off-street loading shall conform to Article V of the Zoning Ordinance of the City of Jersey City.

11. Signs

<u>Use</u>	<u>Type</u>	<u>Number</u>	<u>Size</u>
<u>Residential</u>	<u>Nameplate or Awning</u>	<u>1 per entry</u>	<u>12 sf</u>
<u>Retail, restaurant, café, bar, nightclub</u>	<u>Facade Band sign</u>	<u>1 per street or plaza frontage</u>	<u>20 sf or 15% of ground floor area of that portion of the primary facade, whichever is less</u>
	<u>Blade Sign</u>	<u>1 per street or plaza frontage</u>	<u>8 sf</u>
	<u>Canopy Sign</u>	<u>1 per window bay</u>	<u>Shall be calculated into the maximum facade sign area</u>
<u>Office</u>	<u>Facade Band sign</u>	<u>1 per street or plaza frontage</u>	<u>20 sf or 15% of ground floor area of that portion of the primary facade, whichever is less</u>
<u>Home Occupations</u>	<u>Plaque</u>	<u>1</u>	<u>2 sf</u>

- a. Facade signs in the sign band area above the display window(s) are permitted. Band signs shall display the name and/or logotype of the store only. Band signs shall be illuminated at night. The sign band shall be limited to an area not less than ten (10) feet and not greater than fifteen (15) feet above grade level. In addition, all signs shall set back a minimum of two (2) feet from each side of the building. Sign lettering within the sign band may also be applied directly onto the building surface, rather than onto a sign board.
- b. During construction, one (1) temporary sign indicating: the name of the project or development, general contractor, subcontractor, financing institution and public entity officials (where applicable) shall be permitted. The sign area shall not exceed forty (40) square feet.
- c. All wall signs shall be flush mounted
- d. All blade signs shall project no more than 30 inches from the facade and the bottom of the sign must be a minimum of 9 feet above the sidewalk or plaza.
- e. Internally lit sign boxes are prohibited. Internally lit channel letters are permitted.
- f. Storefront windows shall not be blocked by any interior display case or other form of barrier. Pedestrians on the street shall have the ability to see into the shop and view the activity within.
- g. Signs may include the name of the store and street number only.

12. **Design Standards**

- a. Parking garages must be wrapped by the principal use building to disguise the garage

area. Garages fronting on Sussex Street, however, are not required to be wrapped. Instead, the façade of all parking levels along Sussex Street shall be of compatible material and quality to that used throughout the development and shall be designed to provide visual interest.

- b. Bike parking requirements, as outlined in the Land Development Ordinance, apply
- c. Except for the Sussex Street frontage, no more than fifteen (15) percent of the first floor street and plaza frontage or thirty (30) consecutive linear feet along a public right-of-way and plaza frontage - whichever is greater - may be dedicated to other uses such as meter rooms, blank walls, garage doors or loading zones, emergency exits, etc.
- d. Large blank walls (rear façade, etc.) without fenestration must incorporate facade relief, an expressed structural system, sculpted, carved or penetrated wall surfaces, architectural lighting, or other architectural techniques to provide visual interest.
- e. Window HVAC units (PTAC units) shall not be permitted below twenty (20) feet above grade. At and above twenty (20) feet above grade, all facade vents for air conditioning or heating units must be incorporated into the window opening and mullion design such that vent grills and windows appear as a single unit. This is best achieved by lining up vent grills with the vertical or horizontal edge of the adjacent window and matching the window's length or width or using a spandrel panel to fill any voids.

13. Height Bonus - In recognition of its close proximity to mass transit, and as supported by the Jersey City Master Plan, this district can accommodate greater building heights

An additional 8 stories and 92 feet, for a maximum of 15 stories and 175 feet of height are permitted when the following are all provided:

- a. A privately held and maintained 10,000 square foot pedestrian plaza is developed for 24-hour public use. The Developer and its successors and assigns must agree to maintain and repair the plaza in accordance with a Developer's Agreement entered into with the Planning Board.
- b. Open Space Requirement – 30% of the total lot area shall be provided as outdoor recreation space, which may be averaged over the entire development when a project is developed in phases. This can be allocated and divided up as needed, at grade, as plaza space, as rooftop amenity space, and so forth.
- c. The Developer agrees to enter into an easement with the Jersey City Municipal Utilities Authority ("JCMUA") for ten dollars (\$10.00) nominal consideration for the construction by the JCMUA, at its sole cost and expense, of an underground water main pipe line ("pipe line") on a portion of the land where the private pedestrian plaza is planned. The easement shall provide that such pipe line shall be located in a place on such land that will not disrupt or impede the project and that the construction of the pipe line will not delay or obstruct the developer's construction schedule. Such easement shall give the JCMUA the right to construct the pipe line at any time up to the date the developer applies to the City for the first certificate of occupancy for the project. The developer shall give the JCMUA 90 days written notice of its intention to apply to the City for a certificate of occupancy for the project.
- d. The developer agrees to enter into an easement agreement with the JCMUA for ten dollars (\$10.00) nominal consideration granting a ten (10) foot wide easement to the JCMUA for the maintenance, operation, repair and replacement of the pipe line by

the JCMUA, at its sole cost and expense. The easement shall provide that should it be necessary for the JCMUA to remove any portion of the pedestrian plaza improvements and materials, it will reinstall and restore them, at the JCMUA's sole cost and expense, with the same color, type and quality improvements and materials.

- e. The developer agrees to make cross-street improvements at the intersection of Van Vorst Street and Morris Street utilizing materials that are compatible with the pedestrian plaza;
- f. Buildings must be designed and built with LEED or equivalent green measures that will reduce the overall energy consumption by the building occupants, the energy demands on local utilities, and water consumption by occupants.
- g. For phased development, the developer shall adhere to the following benchmarks:
  - i. Subject to the easement grant limitations identified in this Subsection, the aforementioned easements to JCMUA must be granted with the first phase prior to the issuance of a Certificate of Occupancy by the Jersey City Building Department for that phase
  - ii. Aforementioned plaza and necessary Van Vorst / Morris Street intersection improvements must be completed prior to the issuance of a Certificate of Occupancy by the Jersey City Building Department for the second phase

14. All other requirements shall be as regulated in Sub-Section D. Historic Buffer District

## VIII. PROCEDURAL REQUIREMENTS

### A. Submission of Redevelopment Proposals

Site plan review shall be conducted by the Jersey City Planning Board pursuant to NJSA 40:55D-1 et seq.

As part of the final site plan approval process, the Jersey City Planning Board may require a developer to furnish performance guarantees pursuant to NJSA 40:55D-53. Such performance guarantees shall be in favor of the City of Jersey City, in a form approved by either the Corporation Counsel of the City of Jersey City, or the Attorney for the Jersey City Planning Board. The amount of such performance guarantees shall be determined by the City Engineer and shall be sufficient to assure completion of improvements within one (1) year of final site plan approval.

### B. Duration of Plan's Effect

The provisions of this plan specifying the redevelopment of the project area and the requirements and restrictions with respect thereto shall be in effect for a period of forty (40) years from the date of approval of this plan by the City Council of the City of Jersey City.

### C. Deviation Requests

The Planning Board may grant deviations from the regulations contained within this Redevelopment Plan, where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographic conditions, pre-existing structures or physical features uniquely affecting a specific piece of property, the strict application



of any area, yard, bulk or design objective or regulation adopted pursuant to this Redevelopment Plan, would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property. The Planning Board may also grant such relief in an application relating to a specific piece of property where the purposes of this Redevelopment Plan would be advanced by a deviation from the strict requirements of this Plan and the benefits of the deviation would outweigh any detriments. No relief may be granted under the terms of this section unless such deviation or relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Redevelopment Plan.

#### **D. Procedure for Amending this Plan**

This Redevelopment Plan may be amended from time-to-time upon compliance with the requirements of law. A fee of \$500 ~~\$500~~ **\$1,000** plus all costs of copying and transcripts shall be payable to the City of Jersey City for any request to amend this plan. If there is a designated developer, as provided for under NJSA 40:55 C-1 et seq, said developer shall pay these costs. If there is no developer, the appropriate agency shall be responsible for any and all such costs.

#### **E. Interim Uses**

Interim uses may be established, subject to site plan approval and agreement between the developers and the Planning Board that such use will not have an adverse effect upon existing or contemplated development during the interim use period. Interim uses may be granted for a period of up to three (3) years, and may be renewed at the discretion of the board. Commuter parking that does not serve employees of this redevelopment plan area is specifically prohibited and does not qualify as an interim use.

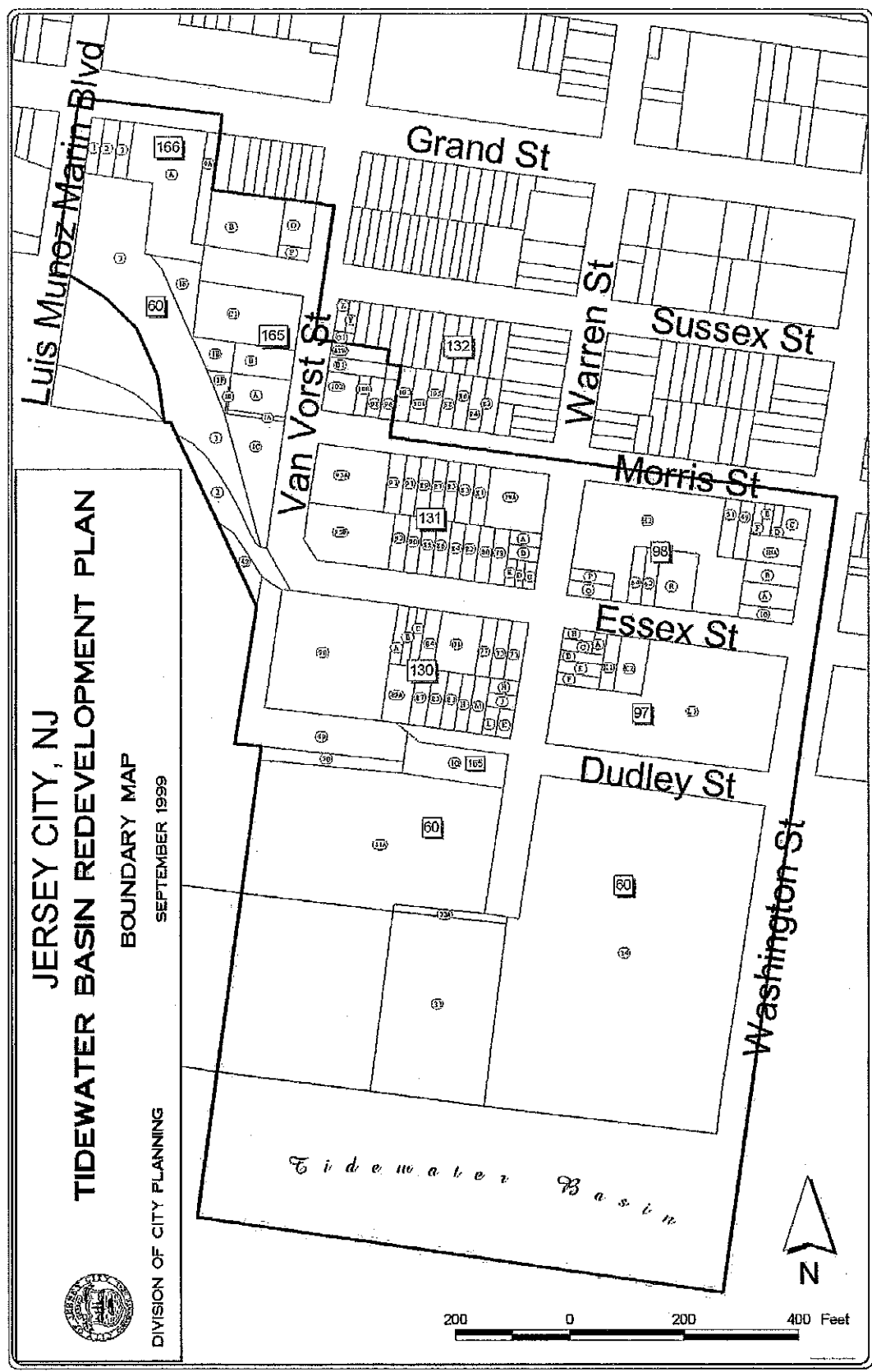
### **IX. OTHER PROVISIONS TO MEET STATE AND LOCAL REQUIREMENTS**

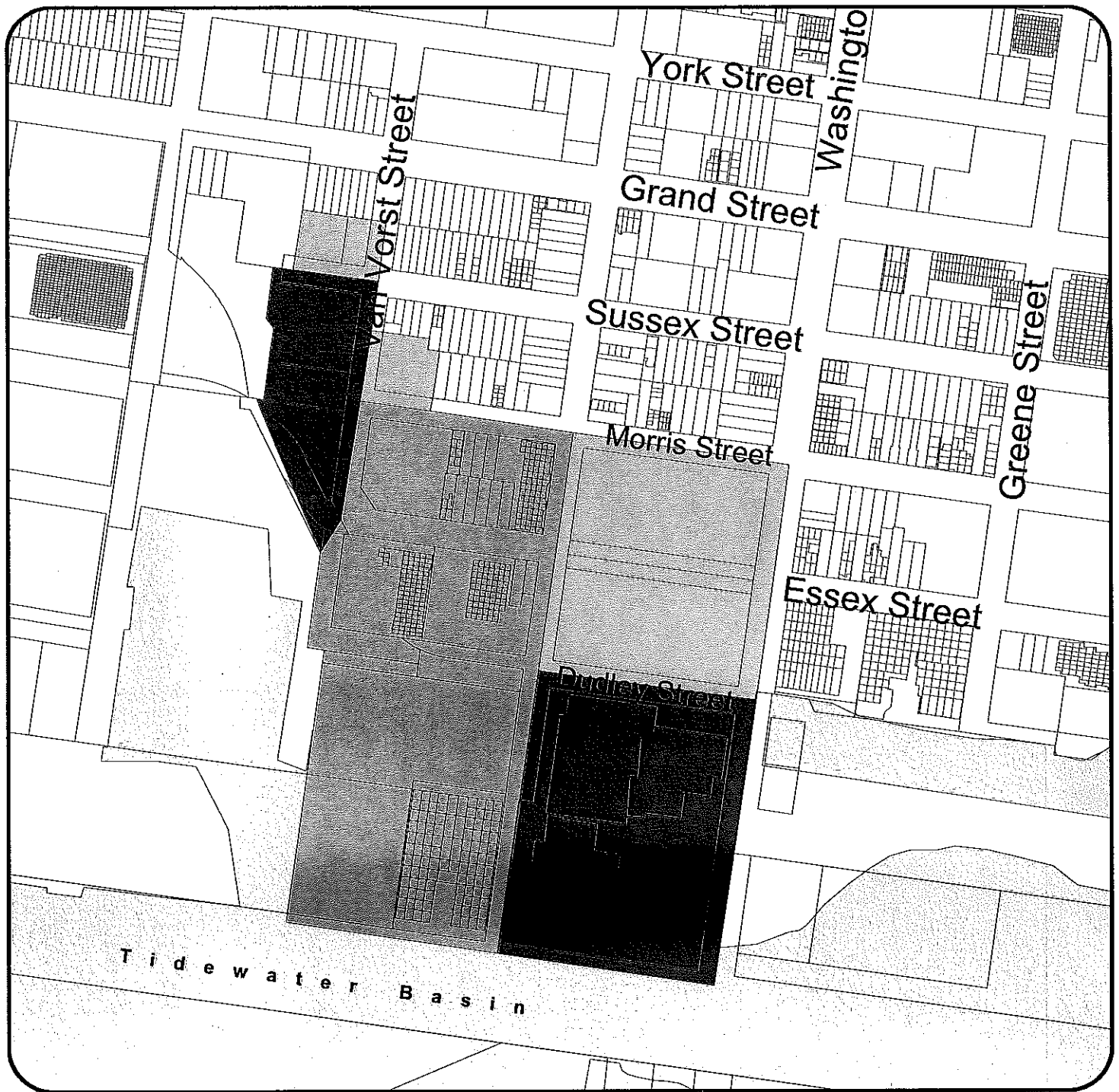
In accordance with NJSA 40A:12A-1 et seq., Chapter 79, Laws of New Jersey 1992, known as *The Local Redevelopment and Housing Law*, the following statements are made.

- A. The Plan herein has delineated a definite relationship to local objectives as to appropriate land uses, density of population, and improved traffic and public transportation, public utilities, recreation and community facilities and other public improvements.
- B. The Plan has laid out various strategies needed to be implemented in order to carry out the objectives of this Plan.
- C. The Plan has given proposed land uses and building requirements for the redevelopment area.
- D. The Acquisition Maps which are a part of this Plan lists all property to be acquired as a result of this Plan. Jersey City shall ensure that any residents displaced by this Redevelopment Plan are afforded all reasonable and lawfully required efforts to secure adequate replacement housing. It is estimated that sufficient relocation housing is available, including subsidized housing, if necessary. All commercial enterprises to be acquired under this Plan will be given relocation assistance in compliance with all applicable laws.
- E. The Plan is in compliance with the Jersey City Master Plan. The Master Plan of the County of Hudson is not contrary to the goals and objectives of the Jersey City Master Plan. The Plan complies with the goals and objectives of the New Jersey Development and Redevelopment Plan is that this Plan and the State's Plan both recognize the need to

redevelop urban land.







- F. This Redevelopment Plan shall supersede all provisions of the Jersey City Land Development Zoning Ordinance that are specifically addressed herein. Any zoning related question that is not addressed herein shall refer to the Jersey City Land Development Zoning Ordinance for clarification. No variance from the requirements herein shall be cognizable by the Zoning Board of Adjustment. The Planning Board alone shall have the authority to grant deviations from the requirements of this Plan, as provided herein. Upon final adoption of this Plan by the Municipal Council of Jersey City, the Jersey City Zoning Map shall be amended to rezone the area covered by this Plan as the Tidewater Basin Redevelopment Area, and all underlying zoning will be voided.



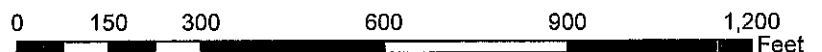


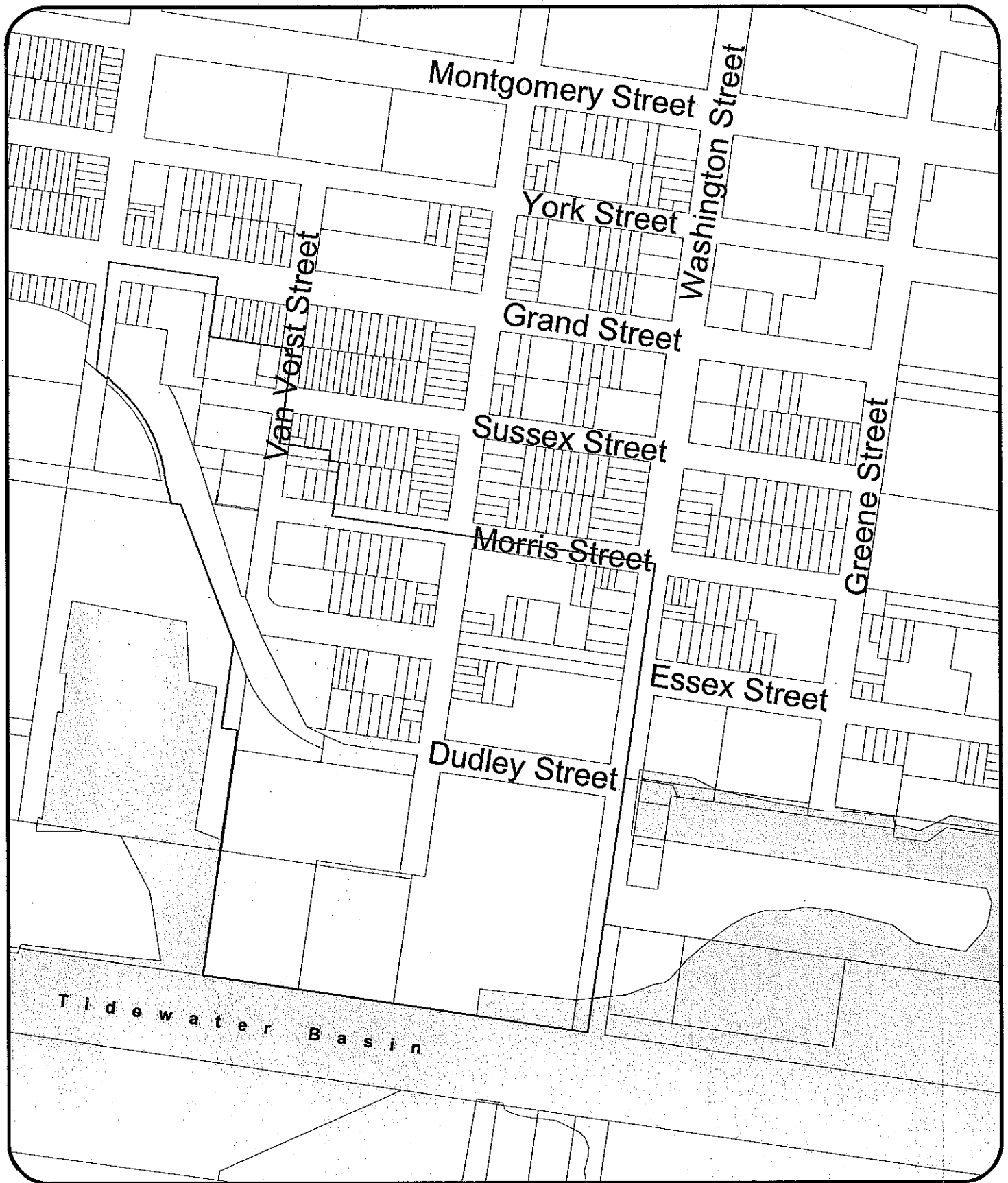
# Tidewater Basin Redevelopment Plan Land Use Map

## ZONE

-  Grand and Marin
-  Historic Buffer
-  Legacy
-  Mixed Use
-  Portside
-  Waterfront

1 inch = 300 feet



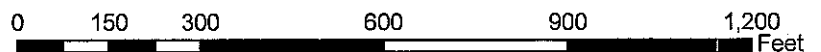


# Tidewater Basin Redevelopment Plan Acquisition Map

To be Acquired

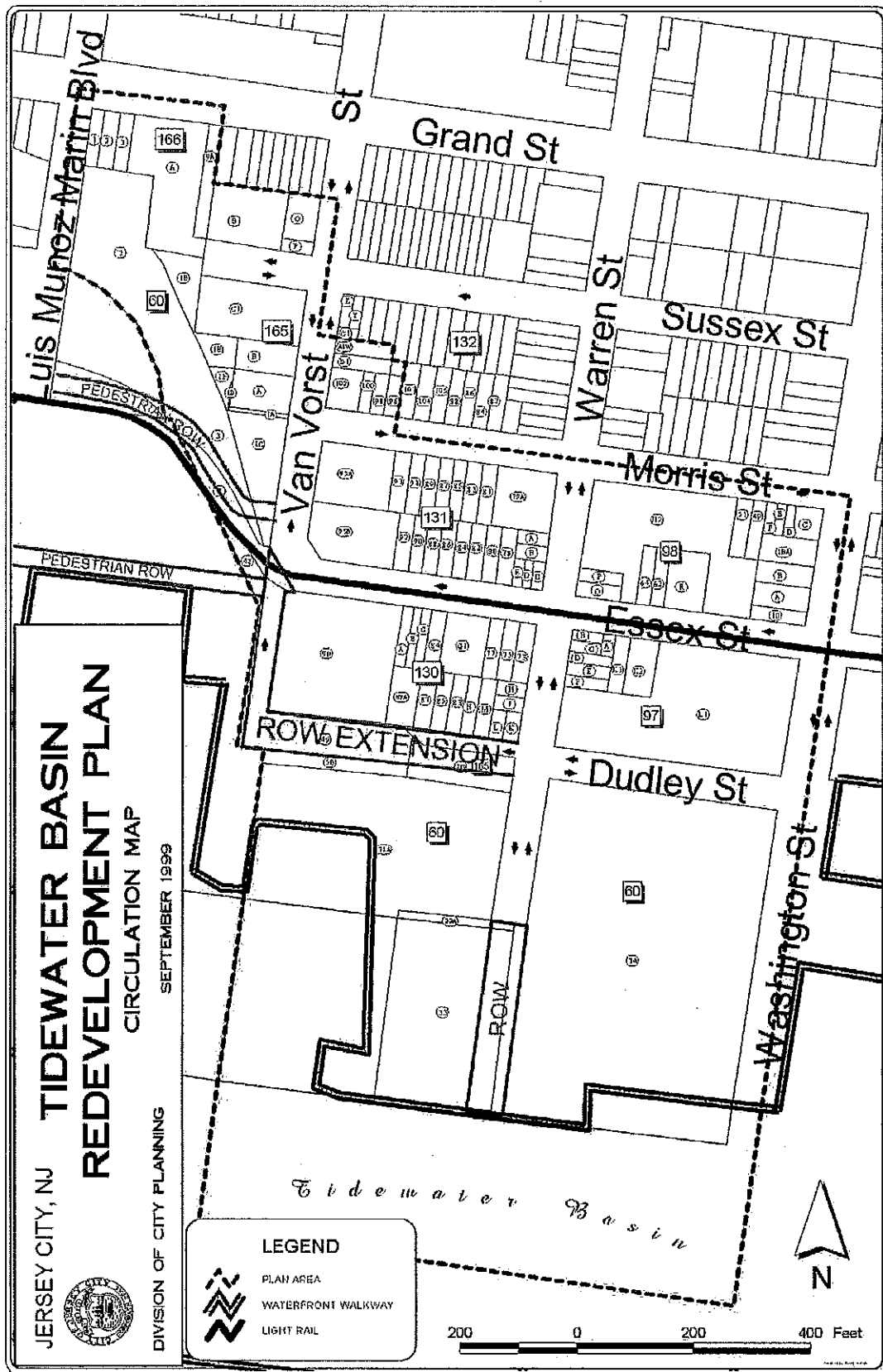


1 inch = 300 feet



August 6, 2009





City Clerk File No. \_\_\_\_\_ Ord. 14.121

Agenda No. \_\_\_\_\_ 3.B \_\_\_\_\_ 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



## ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE

offered and moved adoption of the following ordinance:

CITY ORDINANCE 14.121

**TITLE: ORDINANCE AUTHORIZING THE EXECUTION OF A TEMPORARY EASEMENT AND LICENSE AGREEMENT ON CITY OWNED PROPERTY LOCATED AT 13 LINDEN AVENUE, JERSEY CITY, NEW JERSEY TO ACCOMMODATE TWO SOLAR RENEWABLE ENERGY INSTALLATIONS IN CONNECTION WITH A SOLAR POWER ENERGY SERVICES AGREEMENT ENTERED INTO BY AND AMONG THE CITY OF JERSEY CITY, THE HUDSON COUNTY IMPROVEMENT AUTHORITY AND HUDSON ENERGY SOLAR CORPORATION**

**WHEREAS**, the City of Jersey City (City) is the owner of certain real property at 13 Linden Avenue, Jersey City, New Jersey, 07306, where the City's new Department of Public Work facility is located (Property); and

**WHEREAS**, on December 12, 2013, the City and the Hudson County Improvement Authority (HCIA) entered into a Shared Services Agreement which authorized the HCIA to procure for the City under the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. a contractor to install and operate a photovoltaic system (solar energy system) at the Property; and

**WHEREAS**, the HCIA selected Hudson Energy Solar Corporation (HESC), 7 Cedar St., Ramsey, New Jersey 07446, as the contractor whose proposal was most responsive to a Request for Proposals to develop a solar energy system at the Property; and

**WHEREAS**, pursuant to Resolution No. 14.255, approved on April 9, 2014, the City awarded a Solar Power Purchase Agreement to HESC and thereafter executed such agreement; and

**WHEREAS**, the term of the agreement is for fifteen (15) years; and

**WHEREAS**, HESC requires a temporary easement and license agreement for access to and from the roof and steel canopy located at the Property in order to install and maintain its equipment; and

**WHEREAS**, N.J.S.A. 40A:12-1 et seq. and N.J.S.A. 40A:11-1 et seq. authorize the City to grant a temporary easement and license agreement to HESC; and

**WHEREAS**, the temporary easement is non-exclusive and shall terminate upon the expiration or earlier termination of the PPA; and

**NOW, THEREFORE BE IT ORDAINED** by the Municipal Council of the City of Jersey City that:

Subject to such modifications as may be deemed necessary or appropriate by Corporation Counsel, the Mayor or Business Administrator is authorized to execute a temporary easement and license agreement in substantially the form of the attached, subject to the following minimum terms and conditions:

The conveyance of this temporary easement shall be made subject to:

- (a) easements and restrictions of record, if any, and

(b) all Federal, State, County, and Municipal laws, statutes, codes, ordinances, rules and regulations affecting the Property, its use and occupancy.

All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

This ordinance shall be part of the Jersey City Code as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.

This ordinance shall take effect at the time and in the manner as provided by law.

The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

**NOTE:** All materials are new; therefore underlining has been omitted. For purposes of advertising only, new matter is indicated by **bold face** and repealed matter by *italic*.

RR/BD/kn  
9/15/2014

APPROVED AS TO LEGAL FORM

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
Corporation Counsel

APPROVED: \_\_\_\_\_  
Business Administrator

Certification Required ☐

Not Required ☐



## EXHIBIT M: FORM OF LICENSE AGREEMENT

### SOLAR EASEMENT AND LICENSE AGREEMENT

This Solar Easement and License Agreement, made and entered into as of this [ ] day of August, 2014 (this "License Agreement"), is by and between the City of Jersey City,, having an address at 280 Grove Street, 3<sup>rd</sup> Floor, Jersey City, New Jersey, 07302 ("Host") and HUDSON ENERGY SOLAR CORP., having an address at 7 Cedar Street, Ramsey, New Jersey ("Power Provider").

#### Recitals

- A. Host is the owner of certain real property in Jersey City, New Jersey, as more particularly described in Exhibit A attached hereto (the "Site").
- B. Power Provider designs, installs and maintains equipment that produces electricity from solar energy (the "Solar Energy Equipment").
- C. Subject to the terms and conditions of that certain Solar Power Energy Services Agreement, dated as of August \_\_, 2014 (as amended, modified and in effect from time to time, the "Solar Energy Agreement") between Host and Power Provider, Host has engaged Power Provider to install and maintain Solar Energy Equipment and a backup battery system (collectively the "System") on or at the Site for the purpose of generating electricity to be consumed by Host.
- D. Host has agreed through this License Agreement to provide Power Provider with access to and use of certain areas of the Site, as more particularly described and/or depicted in Exhibit B attached hereto (such areas, the "License Area") in order for Power Provider to install and maintain the System and otherwise perform under the terms of the Solar Energy Agreement.

#### Agreement

NOW, THEREFORE, subject to the approval of an Ordinance by the Host, the parties hereto, for \$1.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, hereby agree as follows:

1. **GRANT.** As further set forth in the Solar Energy Agreement, Host grants Power Provider a license and easement to enter the License Area for the purpose of carrying out Power Provider's obligations under the Solar Energy Agreement, including accessing, installing, maintaining and replacing the System so as to provide Host with electricity generated by the Solar Energy Equipment.

2. **TERM.** This License Agreement shall commence on the date first set forth above and shall terminate three (3) months after the termination or expiration of the Solar Energy Agreement. The initial term of the Solar Energy Agreement is scheduled to

expire by its terms on or about 15 years from the Commercial Operation Date as defined in the Solar Energy Services Agreement.

3. **USE.** Power Provider will use the License Area for the erection, installation, ownership, operation, maintenance, repair, replacement and removal of the System, as well as for all other activities to be conducted by Power Provider in connection with the performance of its obligations and exercise of its rights under the Solar Energy Agreement. Power Provider will comply with all laws, ordinances, orders, rules and regulations (state, federal or local), specifically including, without limitation, all environmental and occupational, health and safety requirements relating to Power Provider's use or occupancy of the License Area and the System and the operation thereof.

4. **INGRESS AND EGRESS.** Host agrees to provide and maintain all roads, driveways and walkways that are now and may be located in and around the Site necessary for proper ingress and egress to and from, and occupancy of, the License Area. Power Provider's vehicular traffic (including, but not limited to, cars, trucks and tractor trailers) and personnel shall have access to the License Area at all times; provided, however, that Power Provider will observe all speed limits and other rules and regulations established by Host with respect to such roads and driveways existing at the Site.

5. **FACILITY SITE UTILITIES.** The parties understand and acknowledge that pursuant to the terms of the Solar Energy Agreement, Host shall provide certain specified utilities to the License Area in connection with Power Provider's construction, start-up, maintenance, repair, replacement and operation of the Solar Energy Equipment. In connection therewith, Power Provider's use of the License Area shall include the non-exclusive appurtenant right to the use of water lines, sewer lines, storm water lines, power lines, fuel lines, telephone and communication lines, pipelines. Host shall have the obligation to maintain and repair all utilities up to the delivery points identified in the Solar Energy Agreement, and Power Provider will have the obligation to maintain and repair all utilities, including all pipes, conduits, ducts, electric or other utilities, sinks or other apparatus through which any utility services are provided, from said delivery points to and then within the License Area, but only to the extent such are used by Power Provider.

6. **CONSTRUCTION LAYDOWN AREA.** Host shall provide a site in close proximity to or within the License Area for the storage and assemblage of materials to construct, erect and install the System. Upon completion of construction of the System, Power Provider will remove all remaining materials from such site and will restore such site as nearly as is reasonably possible to the condition in which it existed immediately prior to the commencement of such activity.

7. **PERSONAL PROPERTY.** All buildings, equipment, machinery and appurtenances placed within the License Area by Power Provider comprising the System shall remain the personal property of Power Provider and shall not be or become fixtures, notwithstanding the manner in which the System is or may be affixed to the real property

of Host. Host shall not suffer or permit the System to become subject to any lien or encumbrance for debt of any kind that may be owed by or demanded of Host.

8. **QUIET ENJOYMENT.** Host covenants and agrees that Power Provider, provided it remains in compliance with its obligations under this License Agreement and the Solar Energy Agreement, shall lawfully and quietly have, hold, occupy and enjoy the License Area and the appurtenant rights thereto in accordance with the terms hereof throughout the entire term of this Agreement. Such occupation and enjoyment shall be free from any claim of any entity or person of superior title thereto without hindrance to, interference with or molestation of Power Provider's use and enjoyment thereof, whether by Host or any of its agents, employees or independent contractors or by any entity, person or persons having or claiming an interest in the License Area.

9. **PRIOR USES.** In entering into this License Agreement, Host does not seek to make Power Provider liable for any past, present or future contamination or pollution or breach of environmental laws, if any, relating to the Site or the land in and around the License Area, unless attributable to the actions of Power Provider. Accordingly, Host agrees to assume full responsibility for (and protect, indemnify and defend Power Provider against) any liability or cleanup obligations for any contamination or pollution or breach of environmental laws related to the Site, including the License Area, unless attributable to the actions of Power Provider.

10. **ASSIGNMENT.** This License Agreement and the rights of the parties hereto may be assigned only in accordance with the terms and provisions of the Solar Energy Agreement governing the assignment thereof.

11. **NOTICE.** All notices and other writings to be given under this License Agreement shall be in writing and shall be sent by registered or certified United States Mail (return receipt requested), or by nationally recognized overnight courier, as follows:

If to Host:

City of Jersey City  
City Hall  
280 Grove Street, 3<sup>rd</sup> Floor  
Jersey City, New Jersey 07302  
Attn: Corporation Counsel

If to Power Provider:

[ ]

Attn: \_\_\_\_\_

Either party shall have the right at any time to notify the other in writing of a different addressee to whom a particular type of notice or other writing is to be sent under this Paragraph 11.

12. **SURVIVAL.** The provisions of Paragraph 9 shall survive termination or expiration of this License Agreement.

13. **FURTHER ASSURANCES.** The parties agree to execute such other documents as may be advisable to give effect to the intentions set out in this License Agreement.

14. **COUNTERPARTS.** This License Agreement may be executed in any number of counterparts, each of which counterparts shall be deemed an original and all of which, when taken together, shall constitute one and the same agreement at such time as each party shall have executed and delivered to the other at least one copy of this License Agreement.

15. **CHOICE OF LAW.** This License Agreement shall be interpreted in accordance with the substantive laws of the State of New Jersey, without regard to its principles or conflicts of laws.

16. **ENTIRE AGREEMENT, AMENDMENTS AND WAIVERS.** This License Agreement constitutes the entire agreement between the parties and supersedes the terms of any previous agreements or understandings, oral or written. Any waiver or amendment of this License Agreement must be in writing. Either party's waiver of any breach or failure to enforce any of the terms of this License Agreement shall not affect or waive that party's right to enforce any other term of this License Agreement.

17. **RECORDATION.** This License Agreement may be recorded in the official records of the county in which the Site is located.

**EXHIBIT M: FORM OF LICENSE AGREEMENT**

**IN WITNESS WHEREOF**, Host and Power Provider have caused this instrument to be executed by their duly authorized representatives.

**CITY OF JERSEY CITY**

By \_\_\_\_\_  
Name:  
Title:

[\_\_\_\_\_]

By \_\_\_\_\_  
Name:  
Title:

EXHIBIT M: FORM OF LICENSE AGREEMENT

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledge to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgement.

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledge to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgement.

## **EXHIBIT M: FORM OF LICENSE AGREEMENT**

### **EXHIBIT A**

**(Description of Site)**

{00028745.1 }

**EXHIBIT M: FORM OF LICENSE AGREEMENT**

**EXHIBIT B**

**(Description or Depiction of License Area)**

{00028745.1 }



City Clerk File No. Ord. 14.122

Agenda No. 3.C 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



## **ORDINANCE OF JERSEY CITY, N.J.**

COUNCIL AS A WHOLE  
offered and moved adoption of the following ordinance:

CITY ORDINANCE 14.122

**TITLE: ORDINANCE AUTHORIZING THE EXECUTION OF A GRANT OF CONSERVATION RESTRICTION/EASEMENT AGREEMENT FOR PUBLIC ACCESS TO THE WATERFRONT AMONG THE CITY OF JERSEY CITY AND LIBERTY HARBOR HOLDING, LLC AS GRANTORS, LHN OWNER URBAN RENEWAL, LLC AS THE DEVELOPER, AND THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AS GRANTEE**

**WHEREAS**, the City of Jersey City ("City") is the owner of real property designated as Luis Munoz Marin Boulevard ("Marin Blvd.") on the City's Tax Map; and

**WHEREAS**, the City's Property that is the subject of this Ordinance is the southerly end of Marin Blvd. that is shown on Exhibit "A" of the Grant of Conversation Restriction/Easement Agreement attached hereto; and

**WHEREAS**, Liberty Harbor Holding, LLC ("LHH") is the owner of certain real property designated as Block 15901, Lot 21.03 on the Tax Map (LHH's Property) that is located along the westerly edge of the waterway known as Roderman Basin; and

**WHEREAS**, the City's Property and LHH's Property together are referred to as the Waterfront Easement Area; and

**WHEREAS**, LHN Owner Urban Renewal, LLC ("LHN") is the owner and developer of certain real property known as Block 15901, Lot 17 on the Tax Map, also known as "Block 24" in the Liberty Harbor North Redevelopment Plan ("LHN's Property"); and

**WHEREAS**, LHN's property adjoins the westerly side of the City's Property; and

**WHEREAS**, the City's Planning Board authorized LHN to construct a mixed use residential and retail building on LHN's Property ("Project"); and

**WHEREAS**, a condition of the Planning Board's Project approval is that LHN replace a bulkhead on LHH's Property next to the Roderman Basin and construct an approximately 400 foot long and 18 foot wide paver walkway on the Waterfront Easement Area of which a 5.5 foot wide portion will be located on LHH's Property and a 12.5 foot wide portion will be located on the City's Property; and

**WHEREAS** the paver walkway on the Waterfront Easement Area will be maintained by LHN and its successors or assigns; and

**WHEREAS**, LHN requires a permit from the New Jersey Department of Environmental Protection ("NJDEP") to construct these improvements because they will constructed next to the Roderman Basin; and

**WHEREAS** the NJDEP requires as a condition of granting the permit that the City's Property and LHH's Property be encumbered by a conservation/restriction easement that restricts the use of the walkway for waterfront access and recreational use by the public; and

**WHEREAS** the NJDEP also requires as a condition for issuing the permit that LHN provide five (5) free public parking spaces for public access to the walkway and 2 directional signs advising the public of the location of the parking spaces; and

**WHEREAS** the City has elected to provide on behalf of LHN five (5) designated parking spaces on Marin Blvd; and

**WHEREAS** the Grant of Conversation Restriction/Easement Agreement will be executed by the City, LHH and LHN; and

**WHEREAS** N.J.S.A. 40A:12-13(b)1 authorizes the City to convey by Ordinance an easement interest in real property to the NJDEP;

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF JERSEY CITY THAT:**

1. Subject to such modifications as may deemed necessary or appropriate by Corporation Counsel, the Mayor or Business Administrator is authorized to execute the Conversation Restriction/Easement Agreement attached hereto granting the NJDEP an easement restricting the City's Property to use for waterfront access and recreational use by the public; and
2. Subject to review and approval by Corporation Counsel, the Mayor or Business Administrator is authorized to execute such other documents that may be necessary or appropriate to effectuate the purposes of this Ordinance.
  - A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
  - B. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
  - C. This ordinance shall take effect at the time and in the manner as provided by law.
  - D. The City Clerk and the Corporation Counsel may change any chapter numbers, article numbers and section numbers if codification of this ordinance reveals a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

Note: New matter is underlined.

For purposes of advertising only, new matter is indicated by **boldface** and repealed matter by *italic*.

RR;kn

APPROVED AS TO LEGAL FORM

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
Corporation Counsel

APPROVED: \_\_\_\_\_  
Business Administrator

Certification Required ☐

Not Required ☐

**RESOLUTION FACT SHEET – NON-CONTRACTUAL**

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

**Full Title of Ordinance/Resolution**

Ordinance authorizing the execution of a grant of conversation restriction/easement agreement for public access to the waterfront among the City of Jersey City and Liberty Harbor Holding, LLC as grantors, LHN Owner Urban Renewal, LLC as the developer, and the New Jersey Department of Environmental Protection as Grantee

**Initiator**

Department/Division	HEDC	Planning
Name/Title		Maryann Bucci-Carter, Supervising Planner
Phone/email	547-4499	maryannb@jcnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

**Resolution Purpose**

LHN is the developer of real property known as Block 15901, Lot 17. Lot 17 adjoins the southerly end of Marin Blvd. It will be constructing 900 residential units and 14,327 sq. ft. of commercial space on its property. As a condition of Planning Board approval for its project, LHN is required to construct on property owned by the City and Liberty Harbor Holding, LLC (LHH) an approximately 400 foot long and 18 foot wide paver walkway of which a 12.5 foot wide portion will be on the City's property and a 5.5 foot wide portion will be on LHH's property. Because the City's property and LHH's property adjoin the waterway known as Roderman Basin, LHN requires a permit from the New Jersey Dept. of Environmental Protection to construct the walkway. The NJDEP permit requires that the walkway be encumbered with an easement that restricts the use of the walkway for waterfront access and recreational use by the public. The easement agreement also provides that the City will make available on Marin Blvd. five parking spaces for users of the walkway.

**I certify that all the facts presented herein are accurate.**

\_\_\_\_\_  
**Signature of Department Director**

\_\_\_\_\_  
**Date**

NJDEP File No: \_\_\_\_\_

Prepared by: \_\_\_\_\_

**GRANT OF CONSERVATION RESTRICTION/EASEMENT  
(Public Access To the Waterfront)**

**THIS GRANT OF CONSERVATION RESTRICTION/EASEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2014, by and among the City of Jersey City, a public body corporate and politic existing under the laws of the State of New Jersey having an office at City Hall, 280 Grove Street, Jersey City, New Jersey, 07302 hereinafter referred to as the "City", LHN Owner Urban Renewal, LLC having an office located at 2 Manhattanville Road, Purchase, New York 10577 hereinafter referred to as the "LHN or Permittee", and Liberty Harbor Holding, LLC having an office located at 345 Tenth Street, Jersey City, New Jersey 07302 hereinafter referred to as the "LHH" (the City and LHH are sometimes hereinafter collectively referred to as the "Grantors") in favor of and to New Jersey Department of Environmental Protection, its successors and assigns, hereinafter referred to as the "Grantee".

**WITNESSETH:**

**WHEREAS**, the City is the owner of certain real property located in the City of Jersey City, County of Hudson, New Jersey, designated as Luis Munoz Marin Boulevard on the official Tax Map of the City of Jersey City (the "City Property") a portion of which is shown on the Conservation Easement Plan attached hereto as **Exhibit A** and more particularly described on a legal description (metes and bounds) attached hereto as **Exhibit B** (the "City Easement Area"); and

**WHEREAS**, the City Property including that portion of it located within the City Easement Area is a part of the Luis Munoz Marin Boulevard public right of way; and

**WHEREAS**, LHN is the owner and developer of certain real property located in the City of Jersey City, County of Hudson, New Jersey, designated as Lot 17, Block 15901 on the official Tax Map of the City of Jersey City and also known as "Block 24" in the Liberty Harbor North Redevelopment Plan (the "LHN Property"); and

**WHEREAS**, LHH is the owner of certain real property located along the western edge of the Roderman Basin in the City of Jersey City, County of Hudson, New Jersey, designated as Block 15901, Lot 21.03 on the official Tax Map of the City of Jersey City (hereinafter the "Waterfront Property") a portion of which is shown on the Conservation Easement Plan attached hereto as **Exhibit A** and more particularly described on a legal

description (metes and bounds) attached hereto as **Exhibit C** (the "Waterfront Easement Area"); and

**WHEREAS**, the Waterfront Easement Area and the City Easement Area are sometimes collectively referred to herein as the "Easement Areas"; and

**WHEREAS**, the City Property and the Waterfront Property are sometimes collectively referred to herein as the "Grantors' Properties"; and

**WHEREAS**, the Planning Board of the City of Jersey City (the "Planning Board") has authorized LHN to construct a mixed use residential and retail development on the LHN Property which will be from 5 to 44 -stories in height, including 900 residential units, 700 total parking spaces and 14,327 square feet of retail space; and

**WHEREAS**, in addition, pursuant to the Planning Board approval, LHN with the consent of the City and LHH, will: (a) replace a bulkhead in the Waterfront Easement Area; and (b) construct an approximately 400 foot long, 18 foot wide paver walkway, a 5.5 foot wide portion of which will be located in the Waterfront Easement Area and a 12.5 foot wide portion of which will be located in the City Easement Area as more specifically shown on **Exhibit A** and the approved plan(s) entitled \_\_\_\_\_, prepared by \_\_\_\_\_, dated \_\_\_\_\_, last revised date \_\_\_\_\_, attached hereto as **Exhibit D**; and

**WHEREAS**, the Grantee has issued to LHN, Permit #0906-07-0006.2, WFD 140001, WFD 140002 (the "Permit"), attached hereto as **Exhibit E** and made a part hereof, which permits the Grantee to perform certain construction described therein, and requires among other conditions public access to the waterfront, pursuant to the Waterfront Development Law, N.J.S.A. 12:5-3 and the corresponding Rules on Coastal Zone Management, N.J.A.C. 7:7E-1 *et seq.*, as amended, specifically N.J.A.C. 7:7E-8.11 Public Access to the Waterfront, N.J.A.C. 7:7E-3.48 Hudson River Waterfront Area; and

**WHEREAS**, by virtue of the location of the Easement Areas directly on the Roderman Basin in the City of Jersey City, the waterfront area of the Grantors' Properties possess great scenic, aesthetic and recreational qualities for the public enjoyment; and

**WHEREAS**, as a condition to the Permit, LHN must provide for public access over the Easement Areas including the water's edge, by creating the walkway for use by the public and causing the Grantors to grant, in perpetuity, to the Grantee, a conservation restriction easement restricting the use of the walkway for waterfront access and recreational use by the public; and

**WHEREAS**, as a condition to the Permit, LHH must provide for public access over the Waterfront Easement Area including the water's edge, and grant to the Grantee a conservation restriction easement restricting the use of the Waterfront Easement Area for waterfront access and recreational use by the public; and

**WHEREAS**, as a condition to the Permit, the City must provide for public access over the City Easement Area and grant to the Grantee a conservation restriction easement restricting the use of the City Easement Area for waterfront access and recreational use by the public; and

**WHEREAS**, as a condition to and in accordance with the Permit, LHN must provide five (5) free public parking spaces specifically for public access to the walkway and two (2) directional signs clearly identifiable to the general public advising of the location of the Parking Spaces; and

**WHEREAS**, the City has elected to dedicate five (5) parking spaces on that portion of the Marin Boulevard public right of way that is adjacent to the City Easement Area (the "Parking Spaces") and authorizes LHN to install two (2) directional signs thereon that are clearly identifiable to the general public advising of the location of the Parking Spaces; and

**WHEREAS**, the Grantee is authorized by N.J.S.A. 13:1D-9 to formulate comprehensive policies for the conservation of natural resources, to promote environmental protection, and prevent pollution of the environment of the State, and is authorized by N.J.S.A. 13:8B-3 to acquire and enforce conservation restrictions; and

**WHEREAS**, the Grantors having the authority to do so, intend to enter into this Conservation Restriction/ Easement in order to grant to the Grantee a Conservation Restriction/ Easement on the Easement Areas for recreational use by the public.

**NOW THEREFORE**, in consideration of the issuance of the Permit to LHN and for such other good and valuable consideration including the construction of the walkway on the City Property and the Waterfront Property by LHN, the receipt and sufficiency of which is hereby acknowledged, and the facts recited above and the terms, conditions and restrictions contained herein, the Grantors hereby agree to the following conveyances, covenants and restrictions in favor of the Grantee:

1. Grantors hereby convey, transfer, assign and grant to the Grantee, a Conservation Restriction/Easement with respect to the Easement Areas as shown on **Exhibit A** and described on **Exhibit B** and **Exhibit C**.
2. The parties agree that the Conservation Restriction/Easement shall be in full force and effect as to the entire Easement Areas as shown in **Exhibit A** and described in **Exhibit B** and **Exhibit C** including those areas upon which the public parking spaces and the walkway have not yet been constructed as of the date of this Conservation Restriction/Easement, and will be accessible to the public at all times in perpetuity.

3. Nothing contained in this Conservation Restriction/Easement shall be deemed or construed to give or grant to the Grantee, the public, or anyone else, any rights to use any portion of the Grantors' Properties except the Easement Areas and the Parking Spaces.
4. LHN, its successors and assigns, shall maintain the Easement Areas pursuant to a Maintenance Plan attached hereto as **Exhibit F** and made a part hereof. The City shall have the right, but not an obligation to perform the Maintenance Plan on the Easement Areas. If for any reason, LHN does not perform the Maintenance Plan and the City elects to do so, LHN agrees to reimburse the City for any costs incurred by the City in performing the Maintenance Plan including without limitation, costs and reasonable attorneys' fees.
5. The Easement Areas shall be available for public recreational purposes. Recreational uses shall not include any activity that violates federal, state, county or municipal law. No construction shall be permitted in the Easement Areas, other than the walkway.
6. The Easement Areas shall be available for waterfront public access purposes being those recreational activities including but not limited to, jogging, bicycling, walking, viewing, fishing, and other similar recreational activities consistent with and compatible with public enjoyment of the Easement Area preserved by the Conservation Restriction Easement herein granted.
7. The City hereby dedicates five (5) Parking Spaces on that portion of the Marin Boulevard public right of way that is adjacent to the City Easement Area and authorizes LHN to install two (2) directional signs thereon that are clearly identifiable to the general public advising of the location of the Parking Spaces. In no event shall the Grantors charge a fee for access to or use of any portion of the Easement Areas including the Parking Spaces reserved by the Conservation Restriction Easement herein granted. The Parking Spaces and directional signs shall not be removed without the written consent of the Grantee.
8. In no event shall the Grantors erect, place or maintain any gate or any obstruction whatsoever across any portion of the Easement Areas that blocks or impedes physical access to the Easement Areas by the public at any time.
9. The Grantors shall not construct, install or maintain any structure, building or other improvement within the Easement Areas, except those appearing on plans and specifications approved by the Grantee in writing pursuant to the Permit.
10. The boundaries of the Easement Areas shall be marked by an unobtrusive, semi-permanent visual marker in a manner of the Permittees choosing, and to the Grantee's satisfaction, no less than 30 days prior to commencement of site

preparation. Examples include the edge of a walkway, curbing, fence post, pipe in the ground, survey markers, and a shrub or tree line.

11. Grantors liability with respect to the Easement Areas is subject to the limitations contained in N.J.S.A. 2A:42A-8 and 2A:42A-8.1 (Landowner Liability Act).
12. Any activity on or use of the Easement Areas by Grantors which is inconsistent with the Public Trust Doctrine, the purposes of this Conservation Restriction/Easement, or not in conformance with the final plans and specifications approved by the Grantee in writing pursuant to the Permit, **Exhibit E**, cited herein or any other permit subsequently issued by the Grantee regulating the Easement Areas shall be prohibited.
13. In the event of a conflict between this Conservation Restriction/Easement and the approved plan(s), **Exhibit D**, and specifications approved by the Grantee in writing pursuant to the Permit, **Exhibit E**, the latter shall govern.
14. This easement shall be a burden upon and shall run with the Grantors' Properties, and shall bind Grantors, and their successors and assigns, in perpetuity.
15. Grantors shall provide the Grantee telephonic and written notice of any transfer or change in ownership of any portion of the Easement Areas, including but not limited to the name and address of the new owner, and including but not limited to any later-formed condominium association, at least one month prior to the day of the signing of those documents accomplishing the actual transfer or change in ownership.
16. In addition to, and not in limitation of, any other rights of the Grantee hereunder or at law or in equity, if the Grantee determines that a breach, default or violation ("Violation") of this Conservation Restriction/Easement has occurred or that a Violation is threatened, the Grantee shall give written notice to Grantors and LHN of such Violation, setting forth the specifics thereof, and demand corrective action from the responsible party sufficient to cure the Violation. If the Grantors or LHN as applicable fail to cure the Violation after receipt of notice thereof from the Grantee, or under circumstances where the Violation cannot reasonably be cured within a time period dictated by the Grantee, fails to begin curing such Violation within the time period dictated by the Grantee, or fails to continue diligently to cure such Violation until finally cured, the Grantee may bring an action at law or in equity in a court of competent jurisdiction:
  - a. To enjoin and/or cure such Violation,
  - b. To enter upon the Easement Areas and to take action to terminate and/or cure such Violation and or to cause the restoration of that portion of the Easement Area affected by such Violation to the condition that existed



prior thereto, or

- c. To seek or enforce such other legal and/or equitable relief or remedies as the Grantee deems necessary or desirable to ensure compliance with the terms, conditions, covenants, obligations and purpose of this Conservation Restriction/Easement.
17. If the Grantee, in its discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Easement Areas, the Grantee may pursue its remedies under paragraph 16 above without prior notice to Grantors or LHN or without waiting for the period provided for cure to expire. The Grantee's rights under this paragraph shall apply equally in the event of either actual or threatened Violations of the terms of this Conservation Restriction/Easement. Grantors and LHN agree that the Grantee's remedies at law for any Violation of the terms of this Conservation Restriction/Easement are inadequate and that the Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance. The above language shall in no event be interpreted to derogate or diminish the Grantee's rights and powers under the laws of the State of New Jersey for the protection of public health, safety and welfare.
18. Enforcement of the terms of this Conservation Restriction/Easement shall be at the discretion of the Grantee and any forbearance by the Grantee to exercise its rights under this Conservation Restriction/Easement in the event of any Violation by Grantors shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent Violation or of any of the Grantee's rights under this Conservation Restriction/Easement. No delay or omission by the Grantee in the exercise of any right or remedy upon any Violation by Grantors or LHN shall impair such right or remedy or be construed as a waiver of such right or remedy.
19. Grantors agree to reimburse the Grantee for any costs incurred by the Grantee in enforcing the terms of this Conservation Restriction/Easement against Grantors, and including, without limitation, the reasonable costs of suit and attorneys' fees. LHN agrees to reimburse the City for any costs incurred by the City in the event LHN fails to comply with the terms of this Conservation Restriction Easement including, without limitation, the reasonable costs of suit and attorneys' fees.
20. The Grantee reserves the right to transfer, assign, or otherwise convey the Conservation Restriction/Easement to any other entity or person to facilitate the operation of and/or public use and enjoyment of the Easement Areas.
21. Any notice, demand, request, consent, approval or communication under this Conservation Restriction/Easement shall be sent by certified mail, return receipt requested or reliable overnight courier, addressed as follows:

To Grantors:

LHN Owner Urban Renewal LLC  
2 Manhattanville Road  
Purchase, New York, 10577  
Attn: Brian Fisher

Liberty Harbor Holding, LLC  
345 Tenth Street  
Jersey City, New Jersey 07302  
Attn: Peter Mocco, Esq.

City of Jersey City  
City Hall  
280 Grove Street  
Jersey City, New Jersey  
Attn: Jeremy Farrell, Esq., Corporation Counsel

To the Grantee:

State of New Jersey  
Department of Environment Protection  
Division of Land Use Regulation  
501 East State Street  
Mail Code 501-02A  
P.O. Box 420  
Trenton, NJ 08625-0420  
Attention: Director, Division of Land Use Regulation  
(609) 984-3444

In addition, any notice relating to paragraph 15 shall be addressed as follows:

To the Department:

State of New Jersey  
Department of Environmental Protection  
Coastal & Land Use Compliance & Enforcement  
401 East State Street  
Mail Code 401-04C  
P.O. Box 420  
Trenton, NJ 08625-0420  
Attention: Manager, Coastal & Land Use Compliance & Enforcement  
(609) 292-1240

22. A party may change the address or person to whom notices to it are required to be given by notice given in the manner above provided.
23. Taxes, Insurance.
- a. LHN retains all responsibilities and shall bear all costs and liabilities of any kind related to the operation, upkeep and maintenance of the Easement Areas. LHN and LHH shall keep the Easement Areas free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by LHN and LHH. Notwithstanding anything herein to the contrary, LHN, acknowledges and agrees that it, and not the City or LHH shall at all times bear all costs and liabilities of any kind related to the operation, upkeep and the maintenance of the entire walkway including performance of the Maintenance Plan attached hereto as **Exhibit F** and made a part hereof.
  - b. LHH shall pay any real estate taxes or other assessments levied on the Waterfront Easement Area. If LHH becomes delinquent in payment of said taxes or assessments, such that a lien against the land is created, the Grantee, at its option, shall, after written notice to the Grantors, have the right to purchase and acquire LHH's interest in Waterfront Easement Area, or to take such other actions as may be necessary to protect the Grantee's interest in the Easement Areas and to assure the continued enforceability of this Conservation Restriction/Easement.
24. Miscellaneous.
- a. The laws of the State of New Jersey shall govern the interpretation and performance of this Conservation Restriction/Easement.
  - b. If any provision of this Conservation Restriction/Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Restriction/Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
  - c. This Conservation Restriction/Easement sets forth the entire agreement of the parties with respect to the Conservation Restriction/Easement. No alteration or variation of this Conservation Restriction/Easement shall be valid or binding unless contained in writing executed and recorded by the parties hereto.
  - d. Except for all obligations related to the operation, upkeep and maintenance of the Easement Areas which shall be the sole responsibility

of LHN, the obligations imposed upon the Grantors by this Conservation Restriction/Easement shall be joint and several. Notwithstanding anything herein to the contrary, LHN agrees to reimburse the City for any costs incurred by the City in the event LHN fails to comply with the terms of this Conservation Restriction Easement including, without limitation, the reasonable costs of suit and attorneys' fees. Notwithstanding anything herein to the contrary, LHH agrees to reimburse the City for any costs incurred by the City in the event LHH fails to comply with the terms of this Conservation Restriction Easement including, without limitation, the reasonable costs of suit and attorneys' fees.

- e. The covenants, terms, conditions and restrictions of this Conservation Restriction/Easement shall be binding upon, and inure to the benefit of, the parties hereto and all parties having or acquiring any right, title or interest in any portion of the Grantors' Properties, including holders of subdivision deeds, and shall continue as a servitude running in perpetuity with the Property.
- f. The captions in this Conservation Restriction/Easement have been inserted solely for convenience of reference and are not a part of this Conservation Restriction/Easement and shall have no effect upon construction or interpretation.
- g. Execution of this Conservation Restriction/Easement does not constitute a waiver of the rights or ownership interest of the State of New Jersey in public property or under the Public Trust Doctrine.
- h. This Conservation Restriction/Easement shall be construed as if it were drafted by all parties. All parties waive all statutory and common law presumptions which might otherwise serve to have the instrument construed in favor of, or against, any party as the drafter hereof.
- i. This Conservation Restriction/Easement may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same instrument.

25. The Grantors reserve unto their selves the right to undertake de minimis modifications of the Easement Areas that are approved in advance and in writing by the Grantee. The Grantee may approve the modification under the following conditions and with the following documentation:

- a. The modification results in an increased level of protection of the regulated resource; or

- b. The modification results in equivalent areas of resources protected; and
  - c. The modification does not compromise the original protected resource.
26. If the Grantee approves the Grantors' proposed modification, the Grantor shall amend this instrument by preparing and submitting to the Grantee for prior review and approval:
- a. A revised Plan and legal description (metes and bounds) for the area to be preserved under the modified Conservation Restriction/Easement (hereinafter the "Modification Documents"); and
  - b. An Amended Conservation Restriction/Easement that reflects the modifications to this original Conservation Restriction/Easement, the justification for the modification and that also includes the deed book and page of the title deed for the property or properties subject to the modified Conservation Restriction/Easement set forth in the Modification Documents.
27. The Grantors shall record the documents listed in paragraph 26, above, in the same manner and place as this original Conservation Restriction/Easement was recorded.
28. This Grant of Conservation Restriction/Easement may only be removed pursuant to N.J.S.A. 13:8B-1 et seq.

**TO HAVE AND TO HOLD** unto the State of New Jersey, Department of Environmental Protection, its successors and assigns forever. The covenants, terms, conditions, restrictions and purposes imposed with this Conservation Restriction / Easement shall not only be binding upon the Grantors but also its agents, personal representatives, assigns and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the Property.

**IN WITNESS WHEREOF**, the Grantors have set their hand and seal on the day and year first above written, and direct that this instrument be recorded in the office of the Hudson County Clerk.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.  
SIGNATURES TO FOLLOW**

LHN OWNER URBAN RENEWAL LLC, a New Jersey  
limited liability company, as Permittee

By: Liberty Harbor North JV LLC, Sole Member

By: Park Liberty Company, LLC, its  
Managing Member

By: Fisher LHN Associates, LLC  
its Manager

By: \_\_\_\_\_  
Brian Fisher, Managing Member

liability company, as Grantor

Liberty Harbor Holding, LLC, a New Jersey limited

By: \_\_\_\_\_  
Peter Mocco, Managing Member

City of Jersey City, as Grantor

By: \_\_\_\_\_  
Business Administrator

STATE OF \_\_\_\_\_ )  
 ) SS.:  
COUNTY OF \_\_\_\_\_ )

Be it remembered that on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me, the subscriber, a Notary Public of \_\_\_\_\_, personally appeared Brian Fisher and he thereupon acknowledged that he signed the foregoing instrument as the Managing Member of Fisher LHN Associates, LLC, Manager of Park Liberty Company, LLC, Managing Member of Liberty Harbor North JV LLC, Sole Member of LHN Owner Urban Renewal LLC, and that said instrument is the voluntary act of deed of said LHN Owner Urban Renewal LLC.

Name: \_\_\_\_\_  
A Notary Public of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF NEW JERSEY )  
 ) SS.:  
COUNTY OF HUDSON )

Be it remembered that on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me, the subscriber, a Notary Public of New Jersey, personally appeared Peter Mocco and he thereupon acknowledged that he signed the foregoing instrument as the Managing Member of Liberty Harbor Holding, LLC and that said instrument is the voluntary act of deed of said Liberty Harbor Holding, LLC.

Name: \_\_\_\_\_  
A Notary Public of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF NEW JERSEY        )  
  )  
COUNTY OF HUDSON        )       SS.:

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared \_\_\_\_\_, and he/she thereupon acknowledged that he/she signed the foregoing instrument as the Business Administrator of the City of Jersey City named herein, and I having first made known to him/her the contents thereof, he/she did thereupon acknowledge that the said instrument made by the said agency and delivered by him/her in such capacity and is the voluntary act and deed of said agency, for the uses and purposes therein expressed.

Name: \_\_\_\_\_  
A Notary Public of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_


Attachments required: Exhibit A, Conservation Restriction/Easement Plan (two pages)  
Exhibit B, Legal Description (Metes and Bounds) of City  
Easement Area (one page)  
Exhibit C, Legal Description (Metes and Bounds) of the  
Waterfront Easement Area (one page)  
Exhibit D, Plans Approved by the Grantee  
Exhibit E, Waterfront Development Permit, Permit Number  
0906-07-0006.2, WFD 140001, WFD 140002  
Exhibit F, Maintenance Plan



**EXHIBIT A**  
**CONSERVATION RESTRICTION/EASEMENT PLAN**  
**(two pages)**

[illegible]

113 JERRY LAYNE RD  
 NEWARK, NJ 07103  
 NEWARK, NJ  
 DALLAS BUSINESS GROUP  
 171 LINDEN LANE  
 FORT WORTH, TX 76103  
 LAMARCA, ALA CHURCH  
 10010 LAMARCA CHURCH RD  
 LAMARCA, ALA 36550  
 2011 NEWARK RD  
 NEWARK, NJ 07103  
 NEWARK, NEW JERSEY 07103

[illegible]

REVIEWS

<input type="checkbox"/> FOR DISSEMINATION <input checked="" type="checkbox"/> FOR COMINT ONLY		1. NAME (Last, first, middle) NAME, T-S-10		2. SERVICE BRANCH AIR FORCE	
3. GRADE AIR 22214		4. SERVICE CODE AIR 12-0101		5. DATE OF BIRTH 05-12-28-010	
6. DATE OF DEATH 05-12-28-010		7. GRADE AIR 22214		8. SERVICE CODE AIR 12-0101	
9. DATE OF BIRTH 05-12-28-010		10. GRADE AIR 22214		11. SERVICE CODE AIR 12-0101	
12. DATE OF DEATH 05-12-28-010		13. GRADE AIR 22214		14. SERVICE CODE AIR 12-0101	
15. DATE OF BIRTH 05-12-28-010		16. GRADE AIR 22214		17. SERVICE CODE AIR 12-0101	
18. DATE OF DEATH 05-12-28-010		19. GRADE AIR 22214		20. SERVICE CODE AIR 12-0101	
21. DATE OF BIRTH 05-12-28-010		22. GRADE AIR 22214		23. SERVICE CODE AIR 12-0101	
24. DATE OF DEATH 05-12-28-010		25. GRADE AIR 22214		26. SERVICE CODE AIR 12-0101	
27. DATE OF BIRTH 05-12-28-010		28. GRADE AIR 22214		29. SERVICE CODE AIR 12-0101	
30. DATE OF DEATH 05-12-28-010		31. GRADE AIR 22214		32. SERVICE CODE AIR 12-0101	
33. DATE OF BIRTH 05-12-28-010		34. GRADE AIR 22214		35. SERVICE CODE AIR 12-0101	
36. DATE OF DEATH 05-12-28-010		37. GRADE AIR 22214		38. SERVICE CODE AIR 12-0101	
39. DATE OF BIRTH 05-12-28-010		40. GRADE AIR 22214		41. SERVICE CODE AIR 12-0101	
42. DATE OF DEATH 05-12-28-010		43. GRADE AIR 22214		44. SERVICE CODE AIR 12-0101	
45. DATE OF BIRTH 05-12-28-010		46. GRADE AIR 22214		47. SERVICE CODE AIR 12-0101	
48. DATE OF DEATH 05-12-28-010		49. GRADE AIR 22214		50. SERVICE CODE AIR 12-0101	
51. DATE OF BIRTH 05-12-28-010		52. GRADE AIR 22214		53. SERVICE CODE AIR 12-0101	
54. DATE OF DEATH 05-12-28-010		55. GRADE AIR 22214		56. SERVICE CODE AIR 12-0101	
57. DATE OF BIRTH 05-12-28-010		58. GRADE AIR 22214		59. SERVICE CODE AIR 12-0101	
60. DATE OF DEATH 05-12-28-010		61. GRADE AIR 22214		62. SERVICE CODE AIR 12-0101	
63. DATE OF BIRTH 05-12-28-010		64. GRADE AIR 22214		65. SERVICE CODE AIR 12-0101	
66. DATE OF DEATH 05-12-28-010		67. GRADE AIR 22214		68. SERVICE CODE AIR 12-0101	
69. DATE OF BIRTH 05-12-28-010		70. GRADE AIR 22214		71. SERVICE CODE AIR 12-0101	
72. DATE OF DEATH 05-12-28-010		73. GRADE AIR 22214		74. SERVICE CODE AIR 12-0101	
75. DATE OF BIRTH 05-12-28-010		76. GRADE AIR 22214		77. SERVICE CODE AIR 12-0101	
78. DATE OF DEATH 05-12-28-010		79. GRADE AIR 22214		80. SERVICE CODE AIR 12-0101	
81. DATE OF BIRTH 05-12-28-010		82. GRADE AIR 22214		83. SERVICE CODE AIR 12-0101	
84. DATE OF DEATH 05-12-28-010		85. GRADE AIR 22214		86. SERVICE CODE AIR 12-0101	
87. DATE OF BIRTH 05-12-28-010		88. GRADE AIR 22214		89. SERVICE CODE AIR 12-0101	
90. DATE OF DEATH 05-12-28-010		91. GRADE AIR 22214		92. SERVICE CODE AIR 12-0101	
93. DATE OF BIRTH 05-12-28-010		94. GRADE AIR 22214		95. SERVICE CODE AIR 12-0101	
96. DATE OF DEATH 05-12-28-010		97. GRADE AIR 22214		98. SERVICE CODE AIR 12-0101	
99. DATE OF BIRTH 05-12-28-010		100. GRADE AIR 22214		101. SERVICE CODE AIR 12-0101	
102. DATE OF DEATH 05-12-28-010		103. GRADE AIR 22214		104. SERVICE CODE AIR 12-0101	
105. DATE OF BIRTH 05-12-28-010		106. GRADE AIR 22214		107. SERVICE CODE AIR 12-0101	
108. DATE OF DEATH 05-12-28-010		109. GRADE AIR 22214		110. SERVICE CODE AIR 12-0101	
111. DATE OF BIRTH 05-12-28-010		112. GRADE AIR 22214		113. SERVICE CODE AIR 12-0101	
114. DATE OF DEATH 					

PROPOSED  
CONSERVATION  
EASEMENT EXHIBIT



BLOCK 15901  
LOT 16.01  
**PARK AVENUE**  
(A.K.A. AVENUE D)  
(60' WIDE PER TAX MAP)

REFERENCES:

1. FINAL MAJOR SUBDIVISION, LIBERTY HARBOR NORTH, BLOCK 60, LOTS 27A(11), 27C(10), AND 40, SITUATED IN CITY OF JERSEY CITY, HUDSON COUNTY, NEW JERSEY, PREPARED BY LGA ENGINEERING, INC. DATED 2/28/06, FILED IN THE HUDSON COUNTY CLERK'S OFFICE ON JUNE 20, 2006 AS MAP 6088.
2. LIBERTY HARBOR NORTH "BLOCK 24", SKETCH OF RIGHT-OF-WAY DEDICATION, LUIS MUNOZ MARIN BOULEVARD, SITUATED IN CITY OF JERSEY CITY, HUDSON COUNTY, NEW JERSEY, PREPARED BY LGA ENGINEERING, INC., DATE LAST REVISED 6/12/08.
3. PRELIMINARY MAJOR SITE PLAN, BLOCK 60.26, LOT 1, LIBERTY HARBOR NORTH "BLOCK 24", EXISTING CONDITIONS PLAN, SITUATED IN CITY OF JERSEY CITY, HUDSON COUNTY, NEW JERSEY, PREPARED BY LGA ENGINEERING, INC., DATED 2/12/09, SHEET 2 OF 24.
4. BOUNDARY SURVEY, LIBERTY HARBOR NORTH "BLOCK 24", LOT 17, BLOCK 15901, SITUATED IN CITY OF JERSEY CITY, HUDSON COUNTY, NEW JERSEY, PREPARED BY BIRDSALL SERVICES GROUP, DATE LAST REVISED 1/29/13.
5. CONDOMINIUM PLAN LIBERTY HARBOR NORTH "BLOCK 24" LOT 17, BLOCK 15901, SITUATED IN CITY OF JERSEY CITY, HUDSON COUNTY, NEW JERSEY, PREPARED BY BIRDSALL SERVICES GROUP, DATED JANUARY 4, 2013.
6. CITY OF JERSEY CITY ORDINANCE ACCEPTING THE DEDICATION OF CERTAIN PROPERTY LOCATED AT THE SOUTHERLY PORTION OF MARIN BOULEVARD, INCLUDING ROADWAYS, SIDEWALKS AND UTILITIES TO BE LOCATED THEREIN, WITHIN THE LIBERTY HARBOR NORTH REDEVELOPMENT PLAN AREA, FILED IN THE HUDSON COUNTY CLERK'S OFFICE, ADOPTED 6-11-2008, FILE NO. ORD 08-075.
7. SITE LAYOUT PLAN, PRELIMINARY/FINAL MAJOR SITE PLAN - PHASE 1 AND PRELIMINARY MAJOR SITE PLAN - PHASE 2, PREPARED BY INSITE, DATED NOVEMBER 1, 2013, LAST REVISED APRIL 25, 2014 AS REVISION NO. 3.

**LUIS MUNOZ MARIN BOULEVARD**  
(A.K.A. MARIN BOULEVARD)  
(F.K.A. HENDERSON STREET)  
(60' WIDE PER TAX MAP)

PROPOSED 12.5' WIDE  
CONSERVATION EASEMENT  
AREA = 3,568 S.F. OR 0.0817 AC.

PROPOSED 5.8' WIDE CONSERVATION  
EASEMENT FROM BLOCK 15901, LOT 21.03  
AREA = 1,868 S.F. OR 0.0369 AC.

BLOCK 15901  
LOT 21.03

BLOCK 15901  
LOT 17

BLOCK 15901  
LOT 18.01  
**AVENUE E**  
(60' WIDE)

BLOCK 15810  
LOT 1

GRAPHIC SCALE



( IN FEET )

1 inch = 40 ft.

**GALLAS  
SURVEYING  
GROUP**

171 CHURCH LANE  
NORTH BRUNSWICK, NJ 08902  
TELE: 732-422-6700  
FAX: 732-940-8786  
www.gallasurvey.com

**PROPOSED CONSERVATION EASEMENTS  
LUIS MUNOZ MARIN BOULEVARD**

CITY OF JERSEY CITY  
HUDSON COUNTY  
STATE OF NEW JERSEY

DATE	SCALE	DRAWN:	CHECKED:
8-22-2014	1"=40'	S.N.W.	G.S.G.
FIELD DATE	FIELD BOOK	PAGE	FIELD CREW
8-20-2014	35	76	D.A./M.S.
FILE NO.:	DRAWING NAME/SHEET NO.		
G13107	G13107-EASE.DWG 1 OF 1		

NOT VALID UNLESS EMBOSSED WITH RAISED IMPRESSION OR BLUE INK SEAL

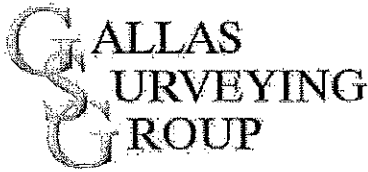
**GREGORY S. GALLAS**

NEW JERSEY PROFESSIONAL LAND SURVEYOR #36244  
NEW JERSEY CERTIFICATE OF AUTHORIZATION #24GA28176800

DATE

**EXHIBIT B**

**LEGAL DESCRIPTION (Metes and Bounds) of City Easement Area  
(one page)**



171 Church Lane  
North Brunswick, NJ 08902  
Tele: 732-422-6700  
Fax: 732-940-8786  
www.gallassurvey.com

AUGUST 22, 2014  
GSG PROJECT NO. G13107

**METES AND BOUNDS DESCRIPTION**  
**PROPOSED 12.5' WIDE CONSERVATION EASEMENT**  
**CITY OF JERSEY CITY**  
**COUNTY OF HUDSON**  
**STATE OF NEW JERSEY**

BEGINNING AT A POINT WITHIN THE RIGHT-OF-WAY OF LUIS MUNOZ MARIN BOULEVARD (A.K.A. MARIN BOULEVARD, F.K.A. HENDERSON STREET – 60' WIDE PER TAX MAP), SAID POINT BEING THE FOLLOWING TWO (2) COURSES FROM THE INTERSECTION OF THE NORTHERLY LINE OF AVENUE E (60' WIDE – A.K.A. LOT 16.01, BLOCK 15901) WITH THE WESTERLY LINE OF LUIS MUNOZ MARIN BOULEVARD:

- A) SOUTH 08 DEGREES - 16 MINUTES - 50 SECONDS WEST, A DISTANCE OF 30.00 FEET TO A POINT, THENCE;
- B) SOUTH 81 DEGREES – 54 MINUTES – 04 SECONDS EAST, A DISTANCE OF 47.50 FEET TO A POINT, AND FROM SAID POINT OF BEGINNING, RUNNING THENCE;
- 1. NORTH 08 DEGREES - 16 MINUTES - 50 SECONDS EAST, A DISTANCE OF 284.65 FEET TO A POINT, THENCE;
- 2. ALONG THE CENTERLINE EXTENSION OF PARK AVENUE, SOUTH 81 DEGREES - 56 MINUTES - 10 SECONDS EAST, A DISTANCE OF 12.50 FEET TO A POINT ON THE EASTERLY SIDE OF LUIS MUNOZ MARIN BOULEVARD, THENCE;
- 3. ALONG THE EASTERLY LINE OF LUIS MUNOZ MARIN BOULEVARD, SOUTH 08 DEGREES - 16 MINUTES - 50 SECONDS WEST, A DISTANCE OF 284.66 FEET TO A POINT, THENCE;
- 4. ALONG THE CENTERLINE EXTENSION OF AVENUE E, NORTH 81 DEGREES - 54 MINUTES - 04 SECONDS WEST, A DISTANCE OF 12.50 FEET TO THE POINT AND PLACE OF BEGINNING.

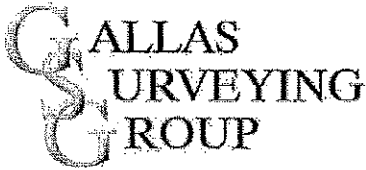
CONTAINING 3,558 S.F. OR 0.0817 AC.

**GALLAS SURVEYING GROUP**

	8-22-2014
GREGORY S. GALLAS	DATE
STATE OF NEW JERSEY	
PROFESSIONAL LAND SURVEYOR NO. 36244	
NEW JERSEY CERTIFICATE OF AUTHORIZATION #24GA28170800	

**EXHIBIT C**

**LEGAL DESCRIPTION (Metes and Bounds) of the Waterfront Easement Area  
(one page)**



171 Church Lane  
North Brunswick, NJ 08902  
Tele: 732-422-6700  
Fax: 732-940-8786  
www.gallassurvey.com

AUGUST 22, 2014  
GSG PROJECT NO. G13107

**METES AND BOUNDS DESCRIPTION**  
**PROPOSED 5.5' WIDE CONSERVATION EASEMENT**  
**PART OF LOT 21.03, BLOCK 15901**  
**CITY OF JERSEY CITY**  
**COUNTY OF HUDSON**  
**STATE OF NEW JERSEY**

BEGINNING AT A POINT ON THE EASTERLY SIDE OF LUIS MUNOZ MARIN BOULEVARD (A.K.A. MARIN BOULEVARD, F.K.A. HENDERSON STREET - 60' WIDE PER TAX MAP), SAID POINT BEING THE FOLLOWING TWO (2) COURSES FROM THE INTERSECTION OF THE NORTHERLY LINE OF AVENUE E (60' WIDE - A.K.A. LOT 16.01, BLOCK 15901) WITH THE WESTERLY LINE OF LUIS MUNOZ MARIN BOULEVARD:

- A) SOUTH 08 DEGREES - 16 MINUTES - 50 SECONDS WEST, A DISTANCE OF 30.00 FEET TO A POINT, THENCE;
- B) SOUTH 81 DEGREES - 54 MINUTES - 04 SECONDS EAST, A DISTANCE OF 60.00 FEET TO A POINT, AND FROM SAID POINT OF BEGINNING, RUNNING THENCE;
- 1. ALONG THE EASTERLY LINE OF LUIS MUNOZ MARIN BOULEVARD, NORTH 08 DEGREES - 16 MINUTES - 50 SECONDS EAST, A DISTANCE OF 284.66 FEET TO A POINT, THENCE; THROUGH THE LANDS OF BLOCK 15901, LOT 21.03 THE FOLLOWING THREE (3) COURSES:
- 2. SOUTH 81 DEGREES - 56 MINUTES - 10 SECONDS EAST, A DISTANCE OF 5.50 FEET TO A POINT, THENCE;
- 3. SOUTH 08 DEGREES - 16 MINUTES - 50 SECONDS WEST, A DISTANCE OF 284.66 FEET TO A POINT, THENCE;
- 4. NORTH 81 DEGREES - 54 MINUTES - 04 SECONDS WEST, A DISTANCE OF 5.50 FEET TO THE POINT AND PLACE OF BEGINNING.

CONTAINING 1,566 S.F. OR 0.0359 AC.

**GALLAS SURVEYING GROUP**

	8-22-2014
GREGORY S. GALLAS	DATE
STATE OF NEW JERSEY	
PROFESSIONAL LAND SURVEYOR NO. 36244	
NEW JERSEY CERTIFICATE OF AUTHORIZATION #24GA28170800	

**EXHIBIT D**

**PLANS APPROVED BY THE GRANTEE**



**EXHIBIT E**

**WATERFRONT DEVELOPMENT PERMIT**

**PERMIT NUMBER 0906-07-0006.2, WFD 140001, WFD 140002**



STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF LAND USE REGULATION

Mail Code 501-02A, P.O. Box 420, Trenton, New Jersey 08625-0420  
Telephone: (609) 777-0454 or Fax: (609) 777-3656  
www.state.nj.us/dep/landuse

PERMIT



<p>In accordance with the laws and regulations of the State of New Jersey, the Department of Environmental Protection hereby grants this permit to perform the activities described below. This permit is revocable with due cause and is subject to the limitations, terms and conditions listed below and on the attached pages. For the purpose of this document, "permit" means "approval, certification, registration, authorization, waiver, etc." Violation of any term, condition or limitation of this permit is a violation of the implementing rules and may subject the permittee to enforcement action.</p>		Approval Date <b>JUL 28 2014</b>
		Expiration Date <b>JUL 27 2019</b>
Permit Number(s): 0906-07-0006.2 WFD 140001, WFD 140002	Type of Approval(s): Waterfront Development Individual Permit Upland, In Water and a Water Quality Certificate	Enabling Statute(s): N.J.S.A. 12:5-3 N.J.S.A. 58:10A
Permittee: Brian Fisher LHN Owner, LLC 2 Manhattanville Road Purchase, New York 10577		Site Location: Blocks: 15810; 15901 Lots: 1; 14.01, 16.01, 17, 19, 21.03 Municipality: City of Jersey City County: Hudson
<p><b>Description of Authorized Activities:</b> The permittee, LHN Owner, LLC, will construct a mixed-use residential and retail development located within designated "Block 24." The development will be from 5 to 44-stories in height, including 900 residential units, 700 total parking spaces and 14,327 square feet of retail space identified as "Master Unit 1." In addition, the project will replace 400 linear feet of bulkhead along the western edge of Roderman Basin and construct an 18 foot wide paver waterfront walkway within the City of Jersey City, Hudson County. <b>Please note, the hotel portion of the development known as "Master Unit 2" will be constructed by others and is not authorized under this permit approval.</b></p> <p>This permit is authorized under, and in compliance with the following Rules on Coastal Zone Management, N.J.A.C. 7:7E-1.1 et seq., specifically: 7:7E-3.25 <i>Flood Hazard Areas, Historic and Archaeological Resources</i> 7:7E-3.36, <i>Endangered or Threatened Wildlife or Vegetation Species Habitats</i> 7:7E-3.38, <i>Special Urban Areas</i> 7:7E-3.43, <i>Geodetic Reference Marks</i> 7:7E-3.47, <i>Hudson River Waterfront Area</i> 7:7E-3.48, <i>Impervious and Vegetative Cover Requirements, Secondary Impacts</i> 7:7E-6.3, <i>High Rise Structures</i> 7:7E-7.14, <i>Water Quality</i> 7:7E-8.4, <i>Stormwater Management</i> 7:7E-8.7, <i>Public Access</i> 7:7E-8.11, and <i>Buffers and Compatibility of Uses</i> 7:7E-8.13.</p> <p>By issuance of this permit, the State of New Jersey does not relinquish tidelands ownership or claim to any portion of the subject property or adjacent properties. The permittee shall allow an authorized Division representative the right to inspect the construction pursuant to N.J.A.C. 7:7E-1.5(b)4.</p>		
Prepared by:  Kimberly Kerkuska		Received and/or Recorded by County Clerk:
THIS PERMIT IS NOT EFFECTIVE AND NO CONSTRUCTION APPROVED BY THIS PERMIT, OR OTHER REGULATED ACTIVITY, MAY BE UNDERTAKEN UNTIL THE APPLICANT HAS SATISFIED ALL PRE-CONSTRUCTION CONDITIONS AS SET FORTH HEREIN.		
This permit is not valid unless authorizing signature appears on the last page.		

**STANDARD CONDITIONS:**

**1. Responsibilities:**

- a. The permittee, its contractors and subcontractors shall comply with all conditions of this permit, authorizing and/or supporting documents and approved plans and drawings.
- b. A copy of this permit, other authorizing documents, records and information including all approved plans and drawings shall be maintained at the authorized site at all times and made available to Department representatives or their designated agents upon request.

**2. Permit modification:** Plans and specifications in the application and conditions imposed by this permit shall remain in full force and effect so long as the proposed development or any portion thereof is in existence, unless modified by the Department. No change in plans or specifications upon which this permit is issued shall be made except with the prior written permission of the Department. The filing of a request to modify an issued permit by the permittee, or a notification of planned changes or anticipated noncompliance does not stay any condition of this permit.

**3. Duty to minimize environmental impacts:** The permittee shall take all reasonable steps to prevent, minimize or correct any adverse impact on the environment resulting from activities conducted pursuant to the permit, or from noncompliance with the permit. The permittee shall immediately inform the Department of any unanticipated adverse effects on the environment not described in the application or in the conditions of this permit. The Department may, upon discovery of such unanticipated adverse effects, and upon the failure of the permittee to submit a report thereon, notify the permittee of its intent to suspend the permit

**4. Proper site maintenance:** While the regulated activities are being undertaken, neither the permittee, its contractors nor subcontractors shall cause or permit any unreasonable interference with the free flow of a regulated feature by placing or dumping any materials, equipment, debris or structures within or adjacent to the regulated area. Upon completion or abandonment of the work, the permittee, its contractors or subcontractors shall remove and dispose of in a lawful manner all excess materials, debris, equipment, silt fences and other temporary soil erosion and sediment control devices from all regulated areas. Only clean non-toxic fill shall be used where necessary.

**5. Sediment control:** Development which requires soil disturbance, creation of drainage structures, or changes in natural contours shall conduct operations in accordance with the latest revised version of "Standards for Soil Erosion Sediment Control in New Jersey," promulgated by the New Jersey State Soil Conservation Committee, pursuant to the Soil Erosion and Sediment Control Act of 1975, N.J.S.A. 4:24-42 et seq. and N.J.A.C. 2:90-1.3-1.14.

**6. Rights of the State:**

- a. This permit does not convey any property rights of any sort, or any exclusive privilege.
- b. Upon notification and presentation of credentials, the permittee shall allow Department representatives or their designated agents, to enter upon the project site and/or where records must be kept under the conditions of this permit, inspect at reasonable times any facilities, equipment, practices or operations regulated or required under the permit, and sample or monitor for the purposes of determining compliance. Failure to allow reasonable access shall be considered a violation of this permit and subject the permittee to enforcement action.

- c. The issuance of this permit shall in no way expose the State of New Jersey or the Department to liability for the sufficiency or correctness of the design of any construction, structure or structures. Neither the State nor the Department shall, in any way, be liable for the loss of life or property which may occur by virtue of the activity of development resulting from any permit.
7. **Duty to Reapply:** If the permittee wishes to continue an activity covered by the permit after the expiration date of the permit authorization, the permittee must apply for and obtain a new permit authorization.
8. **Transfer of Permit:** This permit may not be transferable to any person unless the transfer is approved by the Department. Please refer to the applicable rules for more information.
9. **Other Approvals:** The permittee must obtain any and all other Federal, State and/or Local approvals. Authorization to undertake a regulated activity under this permit does not indicate that the activity also meets the requirements of any other rule, plan or ordinance.
10. **Noncompliance:**
  - a. Any noncompliance with this permit constitutes a violation, and is grounds for enforcement action, as well as modification, suspension and/or termination of the permit.
  - b. The permittee shall immediately report to the Department by telephone at (877) 927-6337 any noncompliance that may endanger health or the environment. In addition, the permittee shall report all noncompliance to Bureau of Coastal and Land Use Compliance and Enforcement, 401 E. State Street, 4th Floor, P.O. Box 420, Mail Code: 401-04C, Trenton, NJ 08625, in writing within five business days of the time the permittee becomes aware of the noncompliance. The written notice shall include: a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated length of time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance. Such notice shall not, however, serve as a defense to enforcement action if the project is found to be in violation of this chapter.
11. **Appeal of Permit:** In accordance with the applicable regulations, any person who is aggrieved by this decision or any of the conditions of this permit may request a hearing within 30 days after notice of the decision is published in the DEP Bulletin. This request must include a completed copy of the Administrative Hearing Request Checklist. The DEP Bulletin is available through the Department's website at <http://www.nj.gov/dep/bulletin> and the Checklist is available through the Division's website at [http://www.nj.gov/dep/landuse/download/lur\\_024.pdf](http://www.nj.gov/dep/landuse/download/lur_024.pdf). In addition to your hearing request, you may file a request with the Office of Dispute Resolution to engage in alternative dispute resolution. Please see the website [www.nj.gov/dep/odr](http://www.nj.gov/dep/odr) for more information about this process.
12. **Recording of Permit:** This permit shall be recorded in its entirety in the office of the County Clerk or the Registrar of Deeds and Mortgages for each county where this project is located. Verified notice of this action shall be forwarded to the Division immediately thereafter.

#### **SPECIAL CONDITIONS:**

13. If you begin any activity approved by this permit, you thereby accept this document in its entirety, and agree to adhere to all terms and conditions. If you do not accept or agree with this document in

its entirety, do not begin construction. You are entitled to request an appeal within a limited time as detailed on the attached administrative hearing request checklist and tracking form.

14. This authorization is valid for a term not to exceed five years from the date of this letter. If the permittee wishes to continue an activity covered by the permit after the expiration date of the permit, the permittee must apply for and obtain a permit extension or a new permit, prior to the permit's expiration.
15. The permittee is responsible for obtaining all necessary approvals from any applicable agencies, including but not necessarily limited to Soil Conservation District Office and the Bureau of Tidelands Management, NJDEP.
16. The applicant/owner shall sign a Department approved conservation restriction for the waterfront walkway which includes a minimum easement or right of way of 30 feet along the tidal waterbody, and a minimum easement or right of way for perpendicular access of 20 feet, for review and approval of the Division. The restriction shall be included on the deed, and recorded in the office of the County Clerk (the REGISTRAR OF DEEDS AND MORTGAGES), in the county wherein the lands included in the waiver are located and proof of recordation shall be submitted to the Division. No site preparation or construction authorized by this permit shall commence until the approved conservation restriction is recorded with the property deed in the office of the County Clerk. **The conservation restriction should conform to the format and content of the model "Public Access to the Waterfront," located on the Division's website at [www.state.nj.us/dep/landuse](http://www.state.nj.us/dep/landuse). Please submit a copy of the draft restriction to Kimberly Kerkuska of this office for review, as well as the final restriction once filed.**
17. Five dedicated free public parking spaces are to be provided specifically for public access to the waterfront walkway. These spaces are to be clearly identifiable to the general public with appropriate signs.
19. The proposed location of the mixed-use building is documented suitable habitat for Urban Peregrine Falcon, a known endangered species in New Jersey. Therefore, in order to protect this species, no lighting on the building is to be directed in an upward position and the design of the building shall avoid having entire walls of glass.
20. This project has not been reviewed for consistency with the applicable Areawide Water Quality Management Plan or the Statewide Water Quality Management Planning Rules at N.J.A.C 7:15. As such, this authorization shall not be construed as any type of consistency determination for any sewage generating structures on the project site. There shall be no development unless and until the proposed sewage generating structures have been found to be consistent with the appropriate Areawide Water Quality Management Plan. For information regarding the water quality planning process, please contact the Department at (609) 984-6888.
21. **Prior to construction**, the permittee must provide the Department with confirmation that this development is consistent with the provisions and recommendations of the Hudson County Water Quality Management Plan.
22. The Department has determined that this project meets the requirements of the Stormwater Management rules at N.J.A.C. 7:8. Any future expansion or alteration of the approved stormwater management system, which would affect water quality, increase the rate or volume of stormwater leaving the site, affect the infiltration capacity on the site, or alter the approved low impact site

design, shall be reviewed and approved by the Department prior to construction. This includes any proposed changes to the discharge characteristics of any basin, the construction of new inlets or pipes that tie into the storm sewer network and/or the replacement of existing inlets or pipes with structures of different capacity.

23. The applicant shall make specific arrangements to ensure the continuous maintenance and efficient operation of all proposed stormwater management measures onsite. This includes the inspection (and cleaning where necessary) of any and all constructed swales, basins, inlets, and mechanical treatment devices at least four times per year and after every major storm totaling 1 inch of rainfall or more, the use of appropriate soil conservation practices onsite, and any other reasonable effort required to maintain the stormwater management system in good working order.
24. It is understood that the floor elevations shown on the approved drawings are the elevations of the lowest finished floors of the proposed building. The construction of any habitable area below these elevations, other than what is shown on the approved drawings, is prohibited. Under this permit, the only aspect of the project approved at elevations below those of the low floors is a parking area, whose elevations are authorized under a hardship exception pursuant to N.J.A.C. 7:13-9.8.

#### **APPROVED PLANS:**

25. The drawings hereby approved are the following:

"DRAWING TITLE: PRELIMINARY/FINAL MAJOR SITE PLAN – PHASE 1 AND PRELIMINARY MAJOR SITE PLAN – PHASE 2," six (6) sheets prepared by InSite Engineering, LLC, all dated November 1, 2013, last revised June 5, 2014;

"SHEET TITLE: SITE LAYOUT PLAN – PHASE 1," SHEET NO: C300;

"SHEET TITLE: SITE LAYOUT PLAN – PHASE 2," SHEET NO: C301;

"SHEET TITLE: GRADING AND DRAINAGE PLAN – PHASE 1," SHEET NO: C302;

"SHEET TITLE: GRADING AND DRAINAGE PLAN – PHASE 2," SHEET NO: C303;

"SHEET TITLE: CONSTRUCTION DETAILS," SHEET NO: C501 and C504.

"Park Liberty Harbor North – 1 & 33 Park Avenue, Jersey City New Jersey," threes (3) sheets, signed by Thomas B. Bauer, dated November 1, 2013, last revised July 21, 2014;

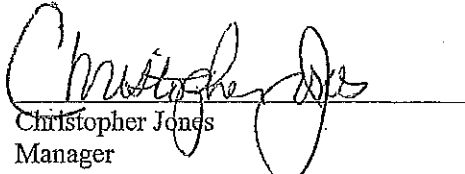
"Phase 1 – Landscape Plan, Submission Plans," DRAWING NO. L-1;

"Phase 2 – Landscape Plan, Submission Plans," DRAWING NO. L-2; and

"Site Details, Submission Plans," DRAWING NO. L-5.

If you need clarification on any section of this permit or conditions, please contact the Division of Land Use Regulation's Technical Support Call Center at (609) 777-0454.

Approved By:



Christopher Jones  
Manager  
Bureau of Urban Growth and Redevelopment  
Division of Land Use Regulation

Date

7/28/14

Original sent to Agent to record

C: City of Jersey City Construction Official  
Potomac-Hudson Environmental, Inc., Attn: David R. Draper

## **EXHIBIT F**

### **MAINTENANCE PLAN**

1. LHN and LHH agree to maintain the Easement Areas at their expense.
2. Parking Spaces reserved for the public cannot be removed without prior written approval by the Department.
3. "Maintenance" includes:
  - a. Removal of snow, ice, leaves, litter, debris, graffiti, and unauthorized signage from the Easement Areas,
  - b. Regular emptying of trash receptacles,
  - c. Maintaining the surface of the Easement Areas and the area underneath in good repair, reconstruction of any portion of the Easement Areas that may be necessary due to deterioration or destruction of the Easement Areas due to any cause including but not limited to wear and tear, fire, storm, subsidence or flood,
  - d. Maintenance and regular cleaning of drainage basins, grates or any other structure that may be designed to receive surface water runoff from the Easement Areas, maintenance of any lighting fixtures, trash receptacles and benches appearing on the final plans approved by the Department in writing pursuant to Permit #0906-07-0006.2, WFD 140001, WFD 140002 or any permit subsequently issued by the Department regulating the Grantors' Properties, and any other action consistent with these obligations which is necessary to effectuate permanent and convenient public access to the Easement Areas.



City Clerk File No. Ord. 14.123

Agenda No. 3.D 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



## **ORDINANCE OF JERSEY CITY, N.J.**

COUNCIL AS A WHOLE  
offered and moved adoption of the following ordinance:

CITY ORDINANCE 14.123

**TITLE: ORDINANCE AUTHORIZING THE TRANSFER OF BLOCK 30305, LOT 6 TO  
THE NEW JERSEY TURNPIKE AUTHORITY**

**THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:**

**WHEREAS**, the New Jersey Turnpike Authority ("NJTA") intends to commence a construction project to improve the New Jersey Turnpike at Interchange 14A (the "Project"), which will include improvements to the ramp network connecting the Turnpike and local roadways at Interchange 14A, including connections to and from Route 440 and Port Jersey Blvd.; and

**WHEREAS**, Lot 6 in Block 30305 on the City's Tax Map (the "land") is a parcel of land that the NJTA needs to acquire to complete the Project; and

**WHEREAS**, the City conveyed the land to Bayonne Industries, Inc. on September 23, 1987; and

**WHEREAS**, First American Title Insurance Company, the title insurance company hired by the NJTA, has concluded that the true owner of the land is inconclusive; and

**WHEREAS**, First American Title Insurance Company is requesting that the City execute a quitclaim deed conveying the land to the NJTA to resolve any issues of future ownership;

**NOW, THEREFORE, BE IT ORDAINED** by the Municipal Council of the City of Jersey City that:

1. Subject to such modifications as may be deemed necessary or appropriate by Corporation Counsel, the Mayor or Business Administrator is authorized to execute a quitclaim deed in substantially the form attached conveying the land known as Lot 6 in Block 30305 on the City's Tax Map to the NJTA.
- A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- B. This ordinance shall be a part of the Jersey City Code as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- C. This ordinance shall take effect at the time and in the manner as provided by law.
- D. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

**NOTE:** All material is new; therefore, underlining has been omitted.  
For purposes of advertising only, new matter is indicated by **bold face** and  
repealed matter by *italic*.

JM/km  
9/17/14

APPROVED AS TO LEGAL FORM

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
Corporation Counsel

APPROVED: \_\_\_\_\_  
Business Administrator

Certification Required ☐

Not Required ☐

**RESOLUTION FACT SHEET – NON-CONTRACTUAL**

This summary sheet is to be attached to the front of any resolution that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

**Full Title of Ordinance/Resolution**

ORDINANCE AUTHORIZING THE TRANSFER OF BLOCK 30305, LOT 6 TO THE NEW JERSEY TURNPIKE AUTHORITY.

**Initiator**

Department/Division	Mayor's Office	
Name/Title	Douglas Carlucci	Mayor's Aid
Phone/email	(201) 547-4943	DCarlucci@icnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

**Resolution Purpose**

In 1987, the City conveyed Block 30303, Lot 6 on the City's tax map to Bayonne Industries, Inc. However, due to the previous numbering of lots on the City's tax map, the title insurance company for the New Jersey Turnpike Authority is concerned that the owner of the parcel of land is not clear. This ordinance will enable the Mayor or Business Administrator to execute a quitclaim deed to convey the same interests that the city possessed in the property that were conveyed to Bayonne Industries, Inc. in 1987 to the Turnpike Authority to prevent any questions in regards to who owns Block 30303, Lot 6 from occurring in the future.

**I certify that all the facts presented herein are accurate.**

\_\_\_\_\_  
**Signature of Department Director**

\_\_\_\_\_  
**Date**

City Clerk File No. Ord. 14.124

Agenda No. 3.E 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE  
offered and moved adoption of the following ordinance:

CITY ORDINANCE 14.124

TITLE: **ORDINANCE SUPPLEMENTING CHAPTER A351 (EXECUTIVE ORDERS AND ORDINANCES) OF THE JERSEY CITY CODE**

**THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:**

A. The following supplements to Chapter A351 (Executive Orders and Ordinances) of the Jersey City Code are adopted:

**Labor Grade**

**Title**

\*

Maintenance Worker 2 Grounds

B. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

C. This ordinance shall be a part of the Jersey City Code as though codified and fully set forth therein. The City shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.

D. This ordinance shall take effect at the time and in the manner as provided by law.

E. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

**NOTE:** All new material is underlined; words in [brackets] are omitted.  
For purposes of advertising only, new matter is indicated by **boldface** and repealed matter by *italic*.

\*Pursuant to N.J.S.A. 40:69A-43a.

JF/he  
9/15/14

APPROVED AS TO LEGAL FORM

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
Corporation Counsel

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
Business Administrator

Certification Required ☐

Not Required ☐

Ordinance/Resolution Fact Sheet

This summary sheet is to be attached to the front of any ordinance, resolution, cooperation agreement, or contract that is submitted for Council consideration. Incomplete or sketch summary sheets will be returned with the resolution or ordinance. The Department, Division, or Agency responsible for the overall implementation of the proposed project or program should provide a concise and accurate state of facts.

Full Title of Ordinance/Resolution/Cooperation Agreement:

**Maintenance Worker 2 Grounds**

Name & Title of Person Initiating Ordinance/Resolution, Etc.:

**Nancy Ramos, Human Resources Director**

Concise Description of the Program, Project, or Plan Proposed in the Ordinance:

**To establish a New Title in accordance with New Jersey Department Civil Services Commission Rules and Regulations.**

Reasons for the Proposed Program, Project, Etc.:

Anticipated Benefits to the Community:

Cost of Program, Project, Etc.: (Indicate the dollar amount of City, State, Federal funds to be used as well as match and in-kind contributions).

Date Proposed Program or Project will Commence:

Anticipated Completion

Date:

Person Responsible for Coordinating Proposed Program, Project Etc.:

Additional Comments:

**Union Affiliation -245 Labor Grade 12**

*I Certify That All Facts Present Herein Are Accurate.*

9/5/14

Date

Nancy Ramos

Department Director

Date Submitted to Law Department 9-8-2014

**NEW TITLE**

**TITLE: MAINTENANCE WORKER 2 GROUNDS**

**Union:** 245

**LG:** 12

**Min:** 11,100      **Max:** 44,043

**Department:** Public Works

**Division:** Parks & Forestry

**Acct#** 375

**Employee:** Terrance Smith

34 Union Street

Jersey City, New Jersey 07305

**Salary:** \$34,828.00 + \$ 500.00



STEVEN M. FULOP  
MAYOR OF JERSEY CITY

CITY OF JERSEY CITY  
OFFICE OF THE MAYOR

CITY HALL | 280 GROVE STREET | JERSEY CITY, NJ 07302  
P: 201.547.5500 | F: 201.547.5442



STEVEN M. FULOP  
MAYOR OF JERSEY CITY

E.O. \_\_\_\_\_

\_\_\_\_\_, 2014

EXECUTIVE ORDER OF THE MAYOR  
OF THE  
CITY OF JERSEY CITY

**CLASSIFIED POSITIONS FOR CITY EMPLOYEES**

Pursuant to the Faulkner Act, N.J.S.A. 40:69A-48, as amended by L.1985, c.374, the Mayor is now authorized to set the salaries, wages or other compensation of all employees of administrative departments except department directors and employees whose salaries are required to be set by ordinance.

Pursuant to this authorization, I issue the following Executive Order establishing guidelines for salaries and wages of those employees whose salaries are set by the Mayor:

**Labor Grade**

**Title**

12

Maintenance Worker 2 Grounds

This order shall take effect immediately.

Very truly yours,

**STEVEN M. FULOP, MAYOR**

SMF/he

cc: Robert J. Kakoleski, Business Administrator  
Jeremy Farrell, Corporation Counsel  
Robert Byrne, City Clerk  
Donna Mauer, Chief Financial Officer  
Nancy Ramos, Personnel Director

City Clerk File No. Ord. 14.125

Agenda No. 3.F 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



## ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE

offered and moved adoption of the following ordinance:

CITY ORDINANCE 14.125

TITLE:

**AN ORDINANCE AMENDING: (1) CHAPTER 175, (FOOD HANDLING ESTABLISHMENTS) ARTICLE III, (FOOD ESTABLISHMENTS) TO CREATE STANDARDS FOR FARMER'S MARKETS; (2) CHAPTER 3, (ADMINISTRATION OF GOVERNMENT) ARTICLE IX, (DEPARTMENT OF PUBLIC WORKS) SECTION 71, (DIVISION OF PARK MAINTENANCE) TO AMEND THE APPROVAL PROCESS FOR FARMER'S MARKETS SEEKING PERMISSION TO OPERATE IN CITY PARKS; AND (3) CHAPTER 239, (PARKS) SECTION 15, (HOURS OF OPERATION; PERMITS; FARMERS' MARKETS) TO CREATE STANDARDS FOR FARMER'S MARKETS OPERATING IN CITY PARKS**

COUNCIL

offered and moved adoption of the following  
Ordinance:

**WHEREAS**, several so-called farmers' markets exist throughout the City; and

**WHEREAS**, there are currently few regulations contained in the City Code governing farmer's markets; and

**WHEREAS**, the City of Jersey City wishes to encourage the growth and development of more farmer's markets throughout the City; and

**WHEREAS**, the City recognizes the need to better regulate the proliferation of farmer's markets in order to ensure the health, safety and welfare of the residents; and

**WHEREAS**, the City wishes to amend Chapter 175 entitled "Food Handling Establishments" to provide standards for farmer's markets; and

**WHEREAS**, the City of Jersey City wishes to encourage the use of portions of City parks for farmer's markets throughout the City; and

**WHEREAS**, the City recognizes the need to improve the approval process for farmer's markets seeking to operate in City parks so as to ensure the health, safety and welfare of the residents; and

**WHEREAS**, the City wishes to amend Chapter 3 entitled "Administration of Government" Article IX entitled "Department of Public Works," Section 71 entitled "Division of Park Maintenance," to improve the process by which farmer's markets are approved to operate within City parks; and

**WHEREAS**, the City wishes to amend Chapter 239, entitled "Parks" Section 15 entitled "Hours of operation; permits; farmer's markets" to create standards for farmer's markets operating in City parks.



**NOW, THEREFORE, BE IT ORDAINED** by the Council of Jersey City that Chapter 175, Article III, shall be amended to read:

**§ 175-16. Applicability.**

This Article shall be applicable to eating and drinking establishments and to itinerant eating and drinking establishments.

**§ 175-17. Restaurant home delivery service; notice.**

- A. Every restaurant which operates or advertises a home delivery service and does not deliver to every location in the City of Jersey City shall post a notice containing the following language:

**(RESTAURANT NAME)**

**DOES NOT DELIVER TO EVERY LOCATION IN JERSEY CITY**

- B. The sign shall be in letters of one inch and shall be conspicuously displayed at the cash register at the point of sale and at the restaurant entrance and exit.
- C. Any restaurant which does not display this sign will be deemed to deliver to any location in Jersey City.
- D. A restaurant which does not deliver to every location in Jersey City and which does not display the above sign shall be punishable as provided in Chapter 1, General Provisions, § 1-25, or to revocation of its license, or both.
- E. "Restaurant" includes any restaurant, pizzeria, tavern, diner, luncheonette or place of business where food and drink are sold for consumption on and off the premises.

**§ 175-18. Definitions.**

As used in this Article, the following terms shall have the meanings indicated:

**AGRICULTURAL MARKET** - Any permanent retail food establishment which is primarily engaged in the sale of raw agricultural products; may include as a minor portion of the operation the sale of factory-sealed or prepackaged food products that do not normally require refrigeration; may include as a minor portion of the operation the sale of other grocery products.

**BAKERY** - Any retail food establishment engaged in the sale or preparation of bakery products such as bread, cakes and pies; may include as a minor portion of the operation the sale of other grocery products.

**BAR/LIQUOR STORE** - Any retail establishment engaged in the sale of alcoholic beverages; may include as a minor portion of the operation the sale of factory-sealed or prepackaged food products.

**BUTCHER** - Any retail food establishment primarily engaged in the sale or preparation of meat products; may include as a minor portion of the operation the sale of other grocery products.

**CATERER/COMMISSARY/KITCHEN** - Any food establishment engaged in the preparation of food which is then transported to be served or offered for sale elsewhere.

**CONFECTIONERY** - Any retail establishment primarily engaged in the sale of non-factory-sealed or prepackaged candy products by weight or piece.

**DELIVERY VEHICLE** - Any mobile vehicle primarily used in the sale or delivery to individuals or food establishments of raw agricultural, frozen dairy or flavored ice, milk/dairy, raw meat/fish/poultry or bakery products.

**FARMER'S MARKET** - Any temporary retail food establishment which operates in a public space and is primarily engaged in the sale of raw agricultural products grown within a 300-mile radius of Jersey City; such markets may include as a minor portion of the operation, the sale of factory-sealed or prepackaged food products that do not normally require refrigeration and may include as a minor portion of the operation the sale of other grocery products such as small-batch food items prepared at a licensed, commercial, non-residential facility.

**FISH MARKET** - Any retail food establishment primarily engaged in the sale or preparation of fish or fish products; may include as a minor portion of the operation the sale of other grocery products.

**FLEA MARKET** - An open or closed air market primarily arranged for individual vendors to sell or trade new or used nonfood products and at which food products may be available for sale at the discretion of the Jersey City Health Officer.

**FOOD DESERT** - A geographic area where affordable and nutritious food is difficult to obtain, particularly for those without access to an automobile.

**FROZEN DAIRY AND FLAVORED ICE PRODUCTS** - Any retail food establishment primarily engaged in the sale or preparation of frozen dairy or flavored ice products.

**GROCERY** - Any retail food establishment engaged in the sale of a limited variety of bakery and dairy products as well as prepackaged and processed food products.

**GROCERY/DELICATESSEN** - Any retail food establishment primarily engaged in the sale of prepared foods and/or hot or cold sandwiches and a limited variety of bakery, meat, fish, poultry, dairy or liquor products, as well as prepackaged and processed food products.

**INSTITUTIONAL KITCHEN** - Any food establishment engaged in the preparation of food which is to be served therein or minimally transported for service within the confines of the structure that houses the kitchen.

~~**ITINERANT EATING AND DRINKING ESTABLISHMENTS** - Any retail food establishment which is not housed in a permanent structure and which moves from location to location. Foods offered will require heating or refrigeration.~~

**MINI-MARKET/MINIMART** - Any retail food establishment engaged in the sale of a limited variety of bakery, meat, fish, poultry, raw agricultural, dairy or liquor products as well as prepackaged and processed food products.

**MISCELLANEOUS LICENSE** - This shall consist of any activity delegated to the Division of Health for licensing or regulation. The license fee shall be determined by the Division of Health.

**MOBILE FOOD VENDORS** - Any retail food establishment which is not housed in a permanent structure and which moves from location to location but which sells foods that require heating or refrigeration.

**NEWSSTAND** - Any retail establishment primarily engaged in the sale of newspapers, magazines and notions; may include as a minor portion of the operation the sale of factory-sealed or prepackaged food products or prepared foods such as coffee, tea and rolls.

**PHARMACY/DRUGSTORE** - Any retail establishment primarily engaged in the sale of drugs, cosmetics and devices pursuant to N.J.S.A. Title 24; may include as a minor portion of the operation the sale of food products.

**RESTAURANT/CAFETERIA (CLASS A)** - Any retail food establishment, having an occupancy of more than 20 persons, engaged in the preparation and sale of food.

**RESTAURANT/LUNCHEONETTE CAFE (CLASS B)** - Any retail food establishment, limited to an occupancy of not more than 20 persons, engaged in the preparation and sale of food.

**SUPERMARKET** - Any retail food establishment engaged in the sale of an extensive variety of bakery, meat, fish, poultry, raw agricultural, dairy or liquor products as well as prepackaged and processed food products.

**TAVERN** - Any retail establishment engaged in the sale of alcohol and in the preparation of foods offered for sale therein.

**TEMPORARY RETAIL FOOD ESTABLISHMENT** - Any retail food establishment which operates at a fixed location for a temporary period of time in connection with a fair, carnival, circus, public exhibition or similar transitory function, including church suppers, picnics or other organizational meetings; includes mobile retail food establishments and mobile agricultural markets.

**§ 175-19. Classification of establishments.**

- A. The classification of each establishment will be determined by the Jersey City Division of Health pursuant to § 175-18

- B. Establishments meeting the criteria for more than one classification shall be charged the greater fee.
- C. If an establishment includes more than one classification, the Health Officer or designee may inspect, rate and issue violations and orders on any separate classification, e.g., fish market, butcher or restaurant.

**§ 175-20. License required; application.**

- A. No person shall operate any food establishment as defined in this article without a license issued by the eCity.
- B. Applications for such license shall be submitted to the Division of Health of the city. The application shall be upon appropriate forms as the Health Officer shall require.

**§ 175-21. License fees.**

- A. The fee for said license shall be as set forth in Chapter 160, Fees and Charges.
- B. There shall be no prorating of license fees. Such license fees shall not be refundable. Such license is not transferable. It shall not be displayed in a conspicuous place in the establishment.

**§ 175-22. License term.**

All licenses provided for in this article shall be for a term of one year beginning on the date of issuance except for a supermarket, which shall be for a term of six months, or Farmer's Markets which shall be in operation during Farmer's Market season (April 1<sup>st</sup> through December 31<sup>st</sup>). Existing licenses shall retain the April 30 expiration date except for existing supermarkets which shall have April 30 and October 30 as expiration dates.

**§ 175-23. Operation without license; failure to renew.**

- A. Food establishments engaged in operation without a license or which have failed to renew a license after notification from the Division of Health shall be punishable as provided in Chapter 1, General Provisions, § 1-25
- B. Establishments operating without a license shall be closed pending application and approval of license.
- C. Establishments failing to renew their license after the issuance of a summons from the Division of Health are subject to forfeiture of license.

**§ 175-24. Food handler's course; fee.**

- A. Pursuant to N.J.A.C. 8:42-3.4(a)5, the Division of Health shall maintain surveillance of retail food establishments, food and beverage vending machines and shall provide for, or conduct, training courses for food services supervisors using curricula approved by the Department of Health.
- B. A minimum of one manager or supervisor of retail food establishments of any classification must satisfactorily complete the Jersey City Health Division food handler's course each year prior to renewal of the license. The effective date of

this requirement shall be the licensing renewal deadline for 1989. Thereafter, no retail food establishment which has failed to meet this requirement shall receive a license. At least one person having satisfactorily completed the Jersey City Health Division food handler's course shall be on the premises during hours of operation.

- C. A fee as provided in Chapter 160, Fees and Charges, will be charged to cover the costs of each food handler's course.

**§ 175-25. Closure by Health Officer.**

- A. If an extremely unsanitary condition exists or if the Health Officer or his /her delegee has reasonable cause to suspect that any food establishment or any employee thereof is or may be a source of food-borne infection, the Health Officer or his /her delegee is authorized to require the immediate closure of the food establishment until the extremely unsanitary condition has been eliminated and/or cause the immediate exclusion of the employee from the food establishment until the employee no longer poses a threat of food-borne infection.
- B. The Health Officer or his /her delegee, when practical, shall give the owner, manager or employee an opportunity to be heard prior to closure or exclusion. However, when the Health Officer or his /her delegee determines that in order to protect the public health a hearing cannot be afforded prior to closure or exclusion, a hearing shall be held within 10 days thereafter.
- C. In addition to the authority and powers conferred herein, the Health Officer is authorized to suspend or revoke the license permitting the operation of a food establishment if the holder thereof shall violate any of the provisions of this Code. No suspension or revocation shall take place prior to the license holder having an opportunity to be heard upon at least 10 days' notice.

**§ 175-26. Inspection of retail food establishments.**

- A. The Health Officer or his /her delegee shall inspect every retail food establishment as necessary.
- B. The person operating a retail food establishment shall permit access to all parts of the establishment.

**§ 175-27. Interference with Division of Health or police.**

No person shall obstruct or in any way interfere with the Health Officer or his /her delegee or with any police officer in the performance of any duty under this chapter or under any other chapter of this Municipal Code.

**§ 175-28. Farmer's Markets.**

- A. Each farmer's markets must be managed by a not-for-profit organization.
- B. Farmer's markets shall only operate during farmer's market season (April 1<sup>st</sup> through December 31<sup>st</sup>).
- C. At least 55% of the total volume of food available for sale must have been harvested within 300 miles of Jersey City (this can include prepared foods like pies or jams made with ingredients within the radius).

- D. At least 25% of the vendors must accept supplemental food vouchers (SNAP/EBT, WIC Cash Value Vouchers, and/or FMNP vouchers).
- E. Farmer's markets vendors shall not use plastic bags to dispense their products.
- F. The Division of Health shall waive the required licensing fees for farmer's markets which operate in areas deemed by the Health Officer to be food deserts.
- G. Non-profit organizations which seek to operate a farmer's markets in a City park must receive additional permission from the Division of Park Maintenance.
- H. Prior to the issuance of the permit, the non-profit organization which plans to operate the farmer's market must provide proof that it has secured general liability insurance for the farmers' market in the amount of One Million Dollars (\$1,000,000.00) from an A.M. Best-rated insurance company which names the City of Jersey City as an additional insured.
- I. Applications to establish a farmer's market and all supporting documents must be submitted to the Division of Health at least thirty (30) days before the planned opening of the market.

**NOW, THEREFORE, BE IT FURTHER ORDAINED** by the Council of Jersey City that Chapter 3, Article IX, Section 71, shall be amended to read:

**§ 3-71.1. Division of Park Maintenance.**

- A. Creation of the Division of Park Maintenance; Director of Park Maintenance in charge. There is hereby created within the Department of Public Works a Division of Park Maintenance, the Director of which shall be the Director of Park Maintenance.
  - (1) Division of Park Maintenance; functions. Under the direction and supervision of the Director of Public Works, the Division of Park Maintenance shall:
    - (a) be responsible for planning and maintaining all facilities for recreational purposes offered by the City, which include parks, playgrounds, green space, sitting areas and indoor recreational facilities.
    - (b) Be responsible for the administration of the Clean Communities Program.
    - (c) Be responsible for the trimming of trees on sidewalks.
    - (d) Be responsible for the planting of trees within public easement areas.

- (e) Be in charge of issuing park usage permits for picnics, reunions, weddings, other social gatherings, and for flea markets and farmers' markets, provided that flea markets and farmers' markets permits are subject to the following permitting requirements:
- (i) Subject to such rules, regulations, restrictions and requirements of § 239-15 of this Code, flea markets permits shall be issued as follows: Each organization seeking a flea market permit may be issued two (2) such permits per calendar year for any one of the following parks in which flea markets may be held: Van Vorst Park; Hamilton Park; Columbia Park; Audubon Park; Ercel Webb Park; Bayside Park; Arlington Park; Riverview Park; Leonard Gordon Park and Sgt. Anthony Park. Each of the aforementioned parks may have no more than six (6) flea markets per year, and there shall be no flea markets permitted and no permits issued for Pershing Field and Grundy Pier Parks; and
- (ii) Subject to such rules, regulations, restrictions and requirements of § 239-15 and § 175-16 et seq. of this Code, farmers' markets permits shall to operate farmers' markets within City Parks may be issued as follows: Park Associations, selling products of farmers which to non-profit organizations which have been licensed by the City Board of Health under § 175-16 et seq. as food handling establishments may apply for farmers' markets permits. For purposes of this Chapter § 3.71.1, an organization will be considered a Park Association if it is a legally constituted not-for-profit corporation of the State of New Jersey which has as its corporate purpose the benefit and improvement of the Jersey City park and for which it is applying for a farmers' markets permit. Such Park Association, when applying for a permit to operate a farmer's market within a City Park, the non-profit organization shall provide proof to the Director of the Division of Park Maintenance, prior to the issuance of the license permit, that the Park Association non-profit organization has been licensed to operate a farmer's market by the City Division of Health and has secured general liability insurance for the farmers' market in the amount of One Million Dollars (\$1,000,000.00) from an A.M. Best-rated insurance company which names the City of Jersey City as an additional insured. Farmers' markets may be held at the following city parks: Van Vorst Park; Hamilton Park; Columbia Park; Audubon Park; Ercel Webb Park; Bayside Park; Arlington Park; Riverview Park; Leonard Gordon Park and Sgt. Anthony Park any City Park except for Pershing Field and J. Owen Grundy Pier Park. There shall be no farmers' markets permitted and no permits issued for Pershing Field and Grundy Pier Parks. Applications to establish a farmer's market in a City park and all supporting documents must be submitted to the Division of Health at least thirty (30) days before the planned opening of the market. If the application is approved by the Division of Health, the applicant must then obtain permission to operate a farmer's market within a

park from the Division of Park Maintenance. Both the Division of Health and the Division of Park Maintenance must approve the operation of a farmer's market within a City park.

- (f) Be responsible for codifying costs to the Tax Collector on work performed on private property.

**NOW, THEREFORE, BE IT ALSO ORDAINED** by the Council of Jersey City that Chapter 239, Section 15, shall be amended to read:

**§ 239-15. Hours of operation; permits; farmers' markets.**

- A. Except for unusual and unforeseen emergencies, parks shall be open to the public every day of the year between the hours of 6:00 a.m. and 10:00 p.m. daily. (J. Owen Grundy Park, however, is exempt from the 10:00 p.m. closing time.) The opening and closing hours for each individual park shall be posted therein for public information.
- B. Any section or part of any park may be declared closed to the public by the Director at any time and for any interval of time, either temporarily or at regular and stated intervals (daily or otherwise) and either entirely or merely to certain uses as the Director shall find reasonably necessary.
- C. All activity is prohibited in the parks between the hours of 10:00 p.m. and 6:00 a.m., except in the case of an exemption or special activity sponsored or approved by the City Council.
- D. The finding of lost articles by park employees shall be reported to the person in charge of the park, who shall make every reasonable effort to locate the owners. The employees shall make every reasonable effort to find articles reported as lost.
- E. A permit shall be obtained from the Director before participating in any park activity.
- F. A person seeking issuance of a permit hereunder shall file an application with the Director or his or her designee. The application shall state:
  - (1) The name and address of the applicant.
  - (2) The name and address of the person, persons, corporation or association sponsoring the activity, if any.
  - (3) The day and hours for which the permit is desired.
  - (4) The park or portion thereof for which such permit is desired.
  - (5) An estimate of the anticipated attendance.
  - (6) Any other information which the Director shall find reasonably necessary to a fair determination as to whether a permit should issue hereunder.



G. The Director or his or her designee shall issue a permit hereunder where he finds:

- (1) That the proposed activity or use of the park will not unreasonably interfere with or detract from the general public enjoyment of the park.
- (2) That the proposed activity and use will not unreasonably interfere with or detract from the promotion of public health, welfare, safety and recreation.
- (3) That the proposed activity or use is not reasonably anticipated to incite violence, crime or disorderly conduct.
- (4) That the proposed activity will not entail unusual, extraordinary or burdensome expense or police operation by the city.
- (5) That the facilities desired have not been reserved for other use at the day and hour required in the application.
- (6) In the case of farmers' markets ~~which are part of the New Jersey Council of Farmers & Communities (NJFCF)~~, a person a non-profit organization seeking a permit for same shall, in addition to all other applicable requirements and restrictions in this chapter and Code, obtain any and all applicable prior approvals from state or local government, including but not limited to any food establishment licenses required pursuant to § 175-16 et seq. of this code.

H. Within five days after receipt of an application, the Director shall apprise an applicant in writing of his or her reasons for refusing a permit, and any aggrieved person shall have the right to appeal in writing within 10 days to the Director, who shall consider the application under the standards set forth in Subsection B hereof and sustain or overrule the decision with 10 days, but no later than two days before the date sought for the permit. The decision of the Director shall be final.

I. A permittee shall be bound by all park rules and regulations and all applicable ordinances fully as though the same were inserted in the permit.

J. The person or persons to whom a permit is issued shall be liable for any loss, damage or injury sustained by any person whatever by reason of the negligence of the person or persons to whom such permit shall have been issued.

K. A permit may be revoked upon a finding of violation of any rule or ordinance or upon good cause shown.

**§ 239-16. Enforcement.**

A. The Director, the police and park employees shall, in connection with their duties imposed by law, diligently enforce the provisions of this chapter.

B. The Director, the police and any park employee shall have the authority to eject from the park any person acting in violation of this chapter.

C. The Director, the police and any park employee shall have the authority to seize and confiscate any property, thing or device in the park or used in violation of this chapter.

I. All Ordinances and parts of Ordinances inconsistent herewith are hereby repealed.

- II. This Ordinance shall be part of the Jersey City Code as though codified and fully set forth therein. The City shall have this Ordinance codified and incorporated in the official copies of the Jersey City Code.
- III. This Ordinance shall take effect on January 1, 2015 in the manner as provided by law.
- IV. The City Clerk and the Corporation Counsel be and hereby are authorized and directed to change any chapter numbers, article numbers and section numbers in the event the codification of this Ordinance reveals that there is conflict between those numbers and the existing code.

**Note:** All new material is underlined; words ~~struck through~~ are omitted. For purposes of advertising only, new matter is **boldface** and repealed by *italics*.

JJH 9/17/14

APPROVED AS TO LEGAL FORM

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
Corporation Counsel

APPROVED: \_\_\_\_\_  
Business Administrator

Certification Required ☐

Not Required ☐

City Clerk File No. Ord. 14.126

Agenda No. 3.6 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



## ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE  
offered and moved adoption of the following ordinance:

### CITY ORDINANCE 14.126

AN ORDINANCE SUPPLEMENTING CHAPTER 332 (VEHICLES AND TRAFFIC) ARTICLE II (TRAFFIC REGULATIONS) SECTION 332-8 (PROHIBITED RIGHT TURNS ON RED SIGNAL) OF THE JERSEY CITY TRAFFIC CODE AMENDING THE DAYS AND HOURS THE RIGHT TURN ON RED SIGNAL IS PROHIBITED AT CANAL ST AND GRAND ST; GRAND ST AND MONMOUTH ST; GRAND ST AND DOUGLAS AND ARTHUR SKINNER MEMORIAL DR (FKA JERSEY AV); GRAND ST AND BARROW ST; GRAND ST AND MARIN BLVD AND GRAND ST AND WASHINGTON ST TO 8:00 A.M. AND 4:00 P.M., SCHOOL DAYS, ALL APPROACHES

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

1. Chapter 332 (Vehicles and Traffic) Article II (Traffic Regulations) Section 332-8 (Prohibited right turns on red signal) of the Jersey City Traffic Code is hereby supplemented as follows:

Section: 332-8 Prohibited right turns on red signal.

No person shall make a right turn when facing a steady red signal (stop indication) at any of the locations listed below.

Name of Street	Direction of Travel	Prohibited Right Turn on Red Signal Onto	Hours and Days
Canal St	North	Grand St	<u>[All times] 8 am to 4 pm</u> <u>School Days</u>
Grand St	All	Grove St	8:00 am to 4 pm <u>School Days</u>
	All	Monmouth St	<u>[All times] 8 am to 4 pm</u> <u>School Days</u>
	All	Douglas and Arthur Skinner Memorial Dr (FKA Jersey Av)	<u>[All times] 8 am to 4 pm</u> <u>School Days</u>
	All	Barrow St	<u>[All times] 8 am to 4 pm</u> <u>School Days</u>
	All	Marin Blvd	<u>[All times] 8 am to 4 pm</u> <u>School Days</u>
	All	Washington St	<u>[All times] 8 am to 4 pm</u> <u>School Days</u>

2. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

3. This ordinance shall be a part of the Jersey City Code as though codified and incorporated in the official copies of the Jersey City Code.

5. The City Clerk and the Corporation Counsel may change any chapter numbers, article numbers and section numbers if codification of this ordinance reveals a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

NOTE: All new material to be inserted is underscored; material to be repealed is in [brackets].

JDS:PCL  
(09.04.14)

APPROVED AS TO LEGAL FORM

\_\_\_\_\_  
Corporation Counsel

APPROVED: \_\_\_\_\_  
Director of Traffic & Transportation

APPROVED: \_\_\_\_\_  
Municipal Engineer

APPROVED: \_\_\_\_\_  
Business Administrator

Certification Required ☐

Not Required ☐

**ORDINANCE FACT SHEET – NON-CONTRACTUAL**

This summary sheet is to be attached to the front of any ordinance that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

**Full Title of Ordinance**

AN ORDINANCE SUPPLEMENTING CHAPTER 332 (VEHICLES AND TRAFFIC) ARTICLE II (TRAFFIC REGULATIONS) SECTION 332-8 (PROHIBITED RIGHT TURNS ON RED SIGNAL) OF THE JERSEY CITY TRAFFIC CODE AMENDING THE DAYS AND HOURS THE RIGHT TURN ON RED SIGNAL IS PROHIBITED AT CANAL ST AND GRAND ST; GRAND ST AND MONMOUTH ST; GRAND ST AND DOUGLAS AND ARTHUR SKINNER MEMORIAL DR (FKA JERSEY AV); GRAND ST AND BARROW ST; GRAND ST AND MARIN BLVD AND GRAND ST AND WASHINGTON ST TO 8:00 A.M. AND 4:00 P.M., SCHOOL DAYS, ALL APPROACHES

**Initiator**

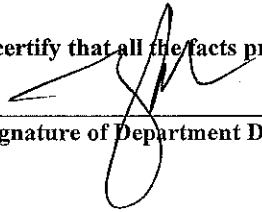
Department/Division	Administration	Architecture, Engineering, Traffic and Transportation
Name/Title	Joao D'Souza on behalf of Councilwoman Coleman	Director of Traffic & Transportation
Phone/email	201.547.4470	JOAO@jcnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

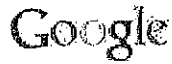
**Ordinance Purpose**

TO AMEND THE DAYS AND HOURS THE RIGHT TURN ON RED SIGNAL IS PROHIBITED AT CANAL ST AND GRAND ST; GRAND ST AND MONMOUTH ST; GRAND ST AND DOUGLAS AND ARTHUR SKINNER MEMORIAL DR (FKA JERSEY AV); GRAND ST AND BARROW ST; GRAND ST AND MARIN BLVD AND GRAND ST AND WASHINGTON ST TO 8:00 A.M. AND 4:00 P.M., SCHOOL DAYS, ALL APPROACHES

I certify that all the facts presented herein are accurate.

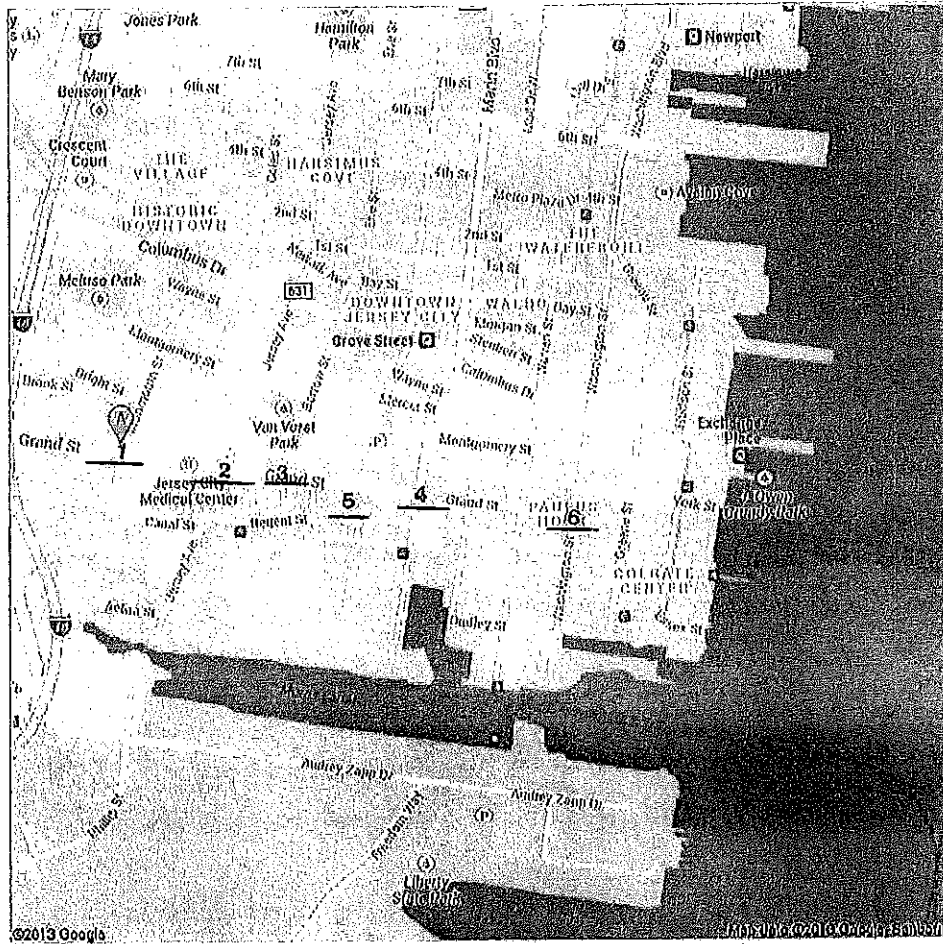
  
\_\_\_\_\_  
Signature of Department Director

9/17/14  
\_\_\_\_\_  
Date



Address Grand St & Monmouth St  
Grand St & Monmouth St  
Old Colony Square, Jersey City,  
NJ 07302

1. Grand St & Monmouth St
2. Grand St & Douglas and Arthur Skinner Memorial Dr (FKA Jersey Av)
3. Grand St & Barrow St
4. Grand St & Marin Blvd
5. Grand St & Canal St
6. Grand St & Washington St



City Clerk File No. Ord. 14.127

Agenda No. 3.H 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



## ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE  
offered and moved adoption of the following ordinance:

CITY ORDINANCE 14.127

TITLE: AN ORDINANCE SUPPLEMENTING CHAPTER 332 (VEHICLES AND TRAFFIC) ARTICLE II (TRAFFIC REGULATIONS) AMENDING SECTION 332-5 (ONE-WAY STREETS) OF THE JERSEY CITY CODE REPEALING THE ONE WAY SOUTH ON COLES STREET FROM TENTH STREET TO TWELFTH STREET

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

1. Chapter 332 (Vehicles and Traffic) Article II (Traffic Regulations) of the Jersey City Code is hereby supplemented as follows:

Section 332-5 ONE-WAY STREETS

The streets or parts of streets listed below are hereby designated as one way streets in the direction indicated.

Name of Street	Direction	Limits
Coles St	South	[ <i>Twelfth St to Tenth St</i> ] <u>Tenth St</u> to Columbus Dr

2. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
3. This ordinance shall be a part of the Jersey City Code as though codified and incorporated in the official copies of the Jersey City Code.
4. The City Clerk and the Corporation Counsel may change any chapter numbers, article numbers and section numbers if codification of this ordinance reveals a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

NOTE: All new material to be inserted is underscored; the material to be repealed is in [*brackets*].

JDS:pc1  
(09.12.14)

APPROVED AS TO LEGAL FORM

\_\_\_\_\_  
Corporation Counsel

APPROVED: \_\_\_\_\_  
Director of Traffic & Transportation

APPROVED: \_\_\_\_\_  
Municipal Engineer

APPROVED: \_\_\_\_\_  
Business Administrator

Certification Required ☐

Not Required ☐

**ORDINANCE FACT SHEET – NON-CONTRACTUAL**

This summary sheet is to be attached to the front of any ordinance that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the resolution.

**Full Title of Ordinance**

AN ORDINANCE SUPPLEMENTING CHAPTER 332 (VEHICLES AND TRAFFIC) ARTICLE II (TRAFFIC REGULATIONS) AMENDING SECTION 332-5 (ONE-WAY STREETS) OF THE JERSEY CITY CODE REPEALING THE ONE WAY SOUTH ON COLES STREET FROM TENTH STREET TO TWELFTH STREET

**Initiator**

Department/Division	Administration	Architecture, Engineering, Traffic and Transportation
Name/Title	Joao D'Souza at the request of James C. McCann, Attorney At Law, Connell Foley LLP, Harborside Financial Center, 2510 Plaza Five, JCNJ 07311, 201.521.1000 ex. 2267 or <a href="mailto:jmccann@connellfoley.com">jmccann@connellfoley.com</a> on behalf of Newport Associates Development Company	Director of Traffic & Transportation
Phone/email	201.547.4470	JOAO@jcnj.org

Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

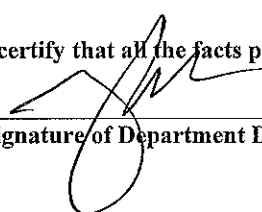
**Ordinance Purpose**

Designate Coles Street between Twelfth St and Tenth St as a "two-way" roadway.

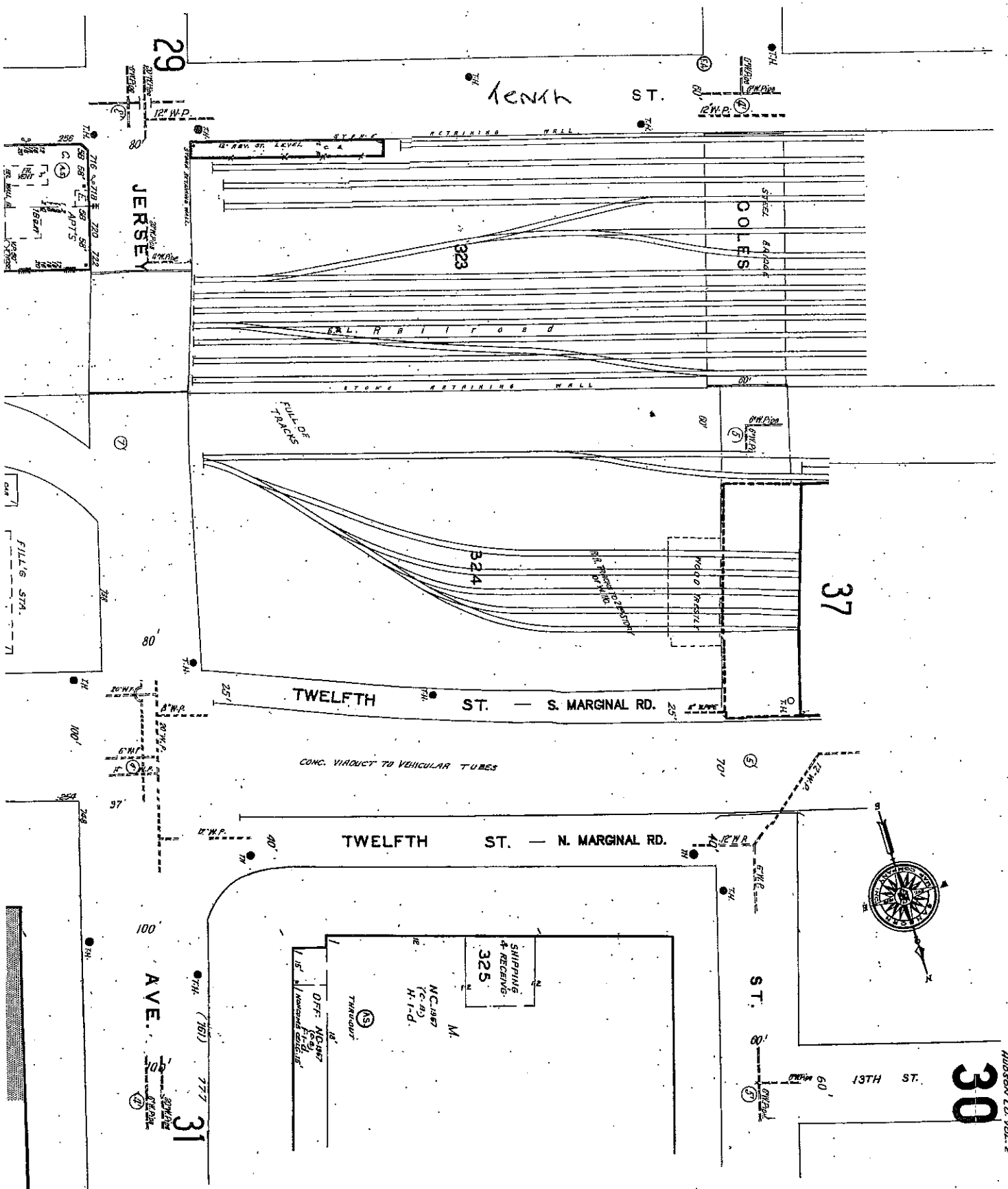
The Jersey City Planning Board approved the site plan for the construction of The Grant and Cleveland Apartments. The approval included the proposed change in traffic flow on Coles Street, from Twelfth Street to Tenth Street, from a "one way" south to a "two-way" roadway.

This change in direction would not create a negative impact on traffic circulation in the neighborhood.

I certify that all the facts presented herein are accurate.

  
Signature of Department Director

9/17/14  
Date



Hudson Co. Vol. 2

30

13TH ST.

ST.

12TH ST.

29

JERSEY

AVE.

31



City Clerk File No. Ord. 14.128  
Agenda No. 3.1 1st Reading  
Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



## ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE

offered and moved adoption of the following ordinance:

CITY ORDINANCE 14.128

**TITLE: CONSENT TO 1) CONVEY OWNERSHIP OF A PROJECT CURRENTLY HELD SOLELY BY GRAND LHN I URBAN RENEWAL LLC, TO INCLUDE BOTH KRE 18 PARK URBAN RENEWAL, LLC, AND 18 PARK ACQUISITION URBAN RENEWAL, LLC, AND RESULT IN JOINT AND SEVERAL OWNERSHIP OF THE PROJECT BY ALL THREE ENTITIES; AND 2) ASSUMPTION BY ALL THREE ENTITIES OF THE FINANCIAL AGREEMENT AND THE LONG TERM TAX EXEMPTION**

**THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:**

**WHEREAS**, Grand LHN I Urban Renewal, LLC, an urban renewal entity, formed and qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 et seq. [Entity]; and

**WHEREAS**, the Entity was the sole Owner of certain property previously designated as Block 15901, Lot 15 - Units 1 and 2, which received approval of a long term tax exemption by the adoption of Ordinance 07-148 on August 22, 2007; and

**WHEREAS**, pursuant to N.J.S.A. 40A:20-1 et seq., and Ordinance 12-071 adopted on May 23, 2012, the City approved an Amended and Restated Long Term Tax Exemption to construct a building with eleven (11) stories, to contain 422 residential rental units, 14,396 square feet of ground floor retail and/or restaurant space, and 258 onsite parking spaces with a valet parking option, [Project]; and

**WHEREAS**, the City and Grand LHN I entered into an Amended and Restated Financial Agreement on June 13, 2012, [Amended and Restated Financial Agreement], a copy of which is attached hereto as Exhibit A; and

**WHEREAS**, upon adoption of Ordinance 12-071, Master Condominium Unit 3 of the Project, known as Block 15901, Lot 15, Unit C0003, more commonly known by the street address of 225 Morris Boulevard, was removed from the tax exemption, resulting in the Project consisting only of Master Condominium 1 and 2, (Unit 3 now to be a transferred title to the Boys and Girls Club, a nonprofit organization); and

**WHEREAS**, Unit 3 is not subject to a long term tax exemption and it not governed by the this Agreement or the Amended and Restated Financial Agreement; and

**WHEREAS**, on August 8, 2014, Grand LHN I filed an Application with the City pursuant to N.J.S.A. 40A:20-1 et seq., seeking the City's consent to the transfer of ownership pursuant to Section 9.1 of the Amended and Restated Financial Agreement in part to Grand LHN I Urban Renewal, LLC, KRE 18 PARK Urban Renewal, LLC [KRE], and 18 Park Acquisition Urban Renewal, LLC [Acquisition], so that all three Entities would jointly and severally own Condominium Units 1 and 2 as Tenants in Common, which ownership restructure shall be governed by and between the entities according to a Tenancy in Common Agreement [TIC Agreement], which is annexed hereto; and

**WHEREAS**, the conveyance is conveyance is necessary in order to qualify as a 1031 Exchange in accordance with the Internal Revenue Service regulations; and

CONSENT TO 1) CONVEY OWNERSHIP OF A PROJECT CURRENTLY HELD SOLELY BY GRAND LHN I URBAN RENEWAL LLC, TO INCLUDE BOTH KRE 18 PARK URBAN RENEWAL, LLC, AND 18 PARK ACQUISITION URBAN RENEWAL, LLC, AND RESULT IN JOINT AND SEVERAL OWNERSHIP OF THE PROJECT BY ALL THREE ENTITIES; AND 2) ASSUMPTION BY ALL THREE ENTITIES OF THE FINANCIAL AGREEMENT AND THE LONG TERM TAX EXEMPTION

**WHEREAS**, Section 9.1 of the Amended and Restated Financial Agreement provides that even a transfer of a portion of ownership of the Project or assignment of the Amended and Restated Financial Agreement is null and void unless approved by the City in advance; and

**WHEREAS**, Section 9.1 of the Amended and Restated Financial Agreement further states that the City shall not unreasonably withhold its consent to the transfer of ownership provided (1) the new entities do not own any other Project subject to long term tax exemption at the time of transfer; (2) the new entities are formed and eligible to operate under the Law; (3) the Original Entity is not in default of the Amended and Restated Financial Agreement or the Law; (4) the obligations under the Agreement is fully and jointly and severally assumed by the new entities; and (5) Grand LHN I shall pay the City a transfer fee equal to 2% of the current Annual Service Charge as required by N.J.S.A. 40A:20-10d; and

**WHEREAS**, Grand LHN 1 will be the managing owner ("the Manager") and shall have the administrative responsibility, on behalf of all the entities for 1) making all payments to the City set forth in the Amended and Restated Financial Agreement, including the Annual Service Charge; 2) making payment of five percent (5%) of the Annual Service Charge to the City for remittance to the County; and 3) filing annually one consolidated audited financial statement with the City on behalf of the entities, which shall be subject to audit at the entities' sole expense; and

**WHEREAS**, although Grand LHN I will assume the management duties, each entity shall be jointly and severally liable under the Amended and Restated Financial Agreement, and shall assume all obligations with respect to this Property under the Amended and Restated Financial Agreement, included but not limited to payment of all fees, charges, and interest; payment of Annual Service Charge, annual payment of excess profits, and payment of the County Service Charge; and filing of annual consolidated audited Financial Statements, and shall jointly and severally hold the City harmless from any liability associated with the ownership structure; and

**WHEREAS**, by adoption of the within Ordinance, the Municipal Council of the City of Jersey City consents to 1) the transfer of a portion of ownership interest of the Project to KRE and Acquisition, as Tenants in Common with Grand LHN I; 2) the assignment of the Amended and Restated Financial Agreement to KRE and Acquisition; 3) the assumption of the Amended and Restated Financial Agreement jointly and severally by the three Entities; and 4) City Business Administrator's execution of any documents necessary and appropriate to effectuate the foregoing.

**NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City that:**

A. The application of Grand LHN I Urban Renewal LLC, an urban renewal company, formed and qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 et seq., a copy of which is on file in the office of the City Clerk, to convey the ownership of the Project on property designated as Block 15901, Lot 15 - Units 1 and 2, more commonly known by the street address of 18 Park Avenue, and more specifically described by metes and bounds in the application, to Grand LHN I Urban Renewal, LLC, KRE 18 PARK Urban Renewal, LLC, and 18 Park Acquisition Urban Renewal, LLC, jointly and severally, as Tenants in Common is hereby approved.

B. The Mayor or Business Administrator is hereby authorized to execute an Amended Financial Agreement, which at a minimum shall include the following terms and conditions:

- (1) Each entity shall own the Project and jointly and severally liable as Tenants in Common under the Amended and Restated Financial Agreement.
- (2) The City acknowledges that as of the date hereof, the names and the addresses of the Entities entitled to receive notice under and pursuant to paragraph 9.1 of the Amended and Restated Financial Agreement shall be amended as follows:

CONSENT TO 1) CONVEY OWNERSHIP OF A PROJECT CURRENTLY HELD SOLELY BY GRAND LHN I URBAN RENEWAL LLC, TO INCLUDE BOTH KRE 18 PARK URBAN RENEWAL, LLC, AND 18 PARK ACQUISITION URBAN RENEWAL, LLC, AND RESULT IN JOINT AND SEVERAL OWNERSHIP OF THE PROJECT BY ALL THREE ENTITIES; AND 2) ASSUMPTION BY ALL THREE ENTITIES OF THE FINANCIAL AGREEMENT AND THE LONG TERM TAX EXEMPTION

Grand LHN I Urban Renewal, LLC [Grand LHN I]  
520 US Highway 22, PO Box 6872  
Bridgewater, NJ 08807  
Attn: David B. Kahan

KRE 18 Park Urban Renewal, LLC [KRE]  
520 US Highway 22, PO Box 6872  
Bridgewater, NJ 08807  
Attn: David B. Kahan

18 Park Acquisition Urban Renewal, LLC [Acquisition]  
50 Washington Street  
Hoboken, NJ 07030  
Attn: Michael Barry

- (3) The Amended and Restated Financial Agreement dated June 13, 2012, hereby remains in full force and effect. No charges otherwise due to the City under the Amended and Restated Financial Agreement are reduced hereby.
- (4) Grand LHN I hereby consents to the assignment of the Amended and Restated Financial Agreement to KRE and Acquisition according to the percentage of ownership interest as allocated in the Tenancy in Common Agreement, annexed and made a part hereto.
- (5) Grand LHN I, KRE and Acquisition shall jointly and severally assume all obligations which previously belonged solely to Grand LHN I under the Amended and Restated Financial Agreement. The Entities shall be jointly and severally liable under the Amended and Restated Financial Agreement for all the monetary and non-monetary obligations and duties enumerated in the Amended and Restated Financial Agreement. The Entities shall assume all risks with respect to the City's approval of the ownership structure for this Property.
- (6) Grand LHN I, KRE and Acquisition shall jointly and severally defend and hold the City harmless from any liability associated with its joint ownership structure.
- (7) The Entities shall file one annual consolidated audited financial statement with the City on behalf of the entities, which shall be subject to audit by the City at the entities' sole expense.
- (8) Expenses shall be included as a deduction in the calculation of Excess Profits pursuant to the Amended and Restated Financial Agreement, except those of one Entity only, as more fully described in the Amended and Restated Financial Agreement, provided however, the City hereby acknowledges and agrees that the transfer of interest set forth herein shall not constitute a revenue or expense of any of the entities pursuant to the Amended and Restated Financial Agreement.
- (9) Nothing associated with the transfer or conveyance of ownership interest shall alter the terms of the Amended and Restated Financial Agreement nor shall the transfer or conveyance of ownership interest negatively impact either the Annual Service Charge paid to the City, or the calculation or obligation to make annual payment of excess profits to the City, or the City's right or ability to collect any charges from the entities, individually or jointly.

C. The City Clerk shall deliver a certified copy of the Ordinance and Agreement consenting to the transfer of a portion of ownership interest in the Project, to the Tax Assessor and Director of the Division of Local Government Services.

CONSENT TO 1) CONVEY OWNERSHIP OF A PROJECT CURRENTLY HELD SOLELY BY GRAND LHN I URBAN RENEWAL LLC, TO INCLUDE BOTH KRE 18 PARK URBAN RENEWAL, LLC, AND 18 PARK ACQUISITION URBAN RENEWAL, LLC, AND RESULT IN JOINT AND SEVERAL OWNERSHIP OF THE PROJECT BY ALL THREE ENTITIES; AND 2) ASSUMPTION BY ALL THREE ENTITIES OF THE FINANCIAL AGREEMENT AND THE LONG TERM TAX EXEMPTION

D. The application is on file with the office of the City Clerk. The Agreement consenting to the transfer of a portion of ownership interest in the Project, shall be in substantially the form on file in the Office of the City Clerk, subject to such modification as the Business Administrator or Corporation Counsel deems appropriate or necessary.

E. Notwithstanding the amendments contained in the within ordinance, Ordinance 12-071 authorizing the execution of the Amended and Restated Financial Agreement remains in full force and effect.

F. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

G. This ordinance shall be part of the Jersey City Code as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.

H. This ordinance shall take effect at the time and in the manner provided by law.

I. The City Clerk and Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

**NOTE:** All material is new; therefore underlining has been omitted.  
For purposes of advertising only, new matter is indicated by **bold face**  
and repealed matter by *italic*.

DJ/JM/he  
9/18/14

APPROVED AS TO LEGAL FORM

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
Corporation Counsel

APPROVED: \_\_\_\_\_  
Business Administrator

Certification Required ☐

Not Required ☐

**CONSENT TO 1) CONVEY OWNERSHIP OF A PROJECT CURRENTLY HELD SOLELY BY GRAND LHN I URBAN RENEWAL LLC, TO INCLUDE BOTH KRE 18 PARK URBAN RENEWAL, LLC, AND 18 PARK ACQUISITION URBAN RENEWAL, LLC, AND RESULT IN JOINT AND SEVERAL OWNERSHIP OF THE PROJECT BY ALL THREE ENTITIES; AND 2) ASSUMPTION BY ALL THREE ENTITIES OF THE FINANCIAL AGREEMENT AND THE LONG TERM TAX EXEMPTION**

**THIS CONSENT TO TRANSFER A PORTION OF THE OWNERSHIP INTEREST AND ASSUMPTION OF FINANCIAL AGREEMENT** is dated the \_\_\_\_ day of \_\_\_\_\_, 2014, by and amongst the **CITY OF JERSEY CITY [City]**, located at 280 Grove Street, Jersey City, New Jersey 07302, **GRAND LHN I URBAN RENEWAL LLC, [Grand LHN I]** a New Jersey limited liability company having an office at 520 U.S. Highway 22, P.O. Box 6872, Bridgewater, NJ 08807; **KRE 18 PARK URBAN RENEWAL LLC, [KRE]** a New Jersey limited liability company having an office at 520 U.S. Highway 22, P.O. Box 6872, Bridgewater, NJ 08807; and **18 PARK ACQUISITION URBAN RENEWAL, LLC [Acquisition]**, a New Jersey limited liability company having an office at 50 Washington Street, Hoboken, NJ 07030.

**WHEREAS**, Grand LHN I Urban Renewal, LLC, an urban renewal entity, formed and qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 et seq. [Entity]; and

**WHEREAS**, the Entity was the sole Owner of certain property previously designated as Block 15901, Lot 15 - Units 1 and 2, which received approval of a long term tax exemption by the adoption of Ordinance 07-148 on August 22, 2007; and

**WHEREAS**, pursuant to N.J.S.A. 40A:20-1 et seq., and Ordinance 12-071 adopted on May 23, 2012, the City approved an Amended and Restated Long Term Tax Exemption to construct a building with eleven (11) stories, to contain 422 residential rental units, 14,396 square feet of ground floor retail and/or restaurant space, and 258 onsite parking spaces with a valet parking option, [Project]; and

**WHEREAS**, the City and Grand LHN I entered into an Amended and Restated Financial Agreement on June 13, 2012, [Amended and Restated Financial Agreement], a copy of which is attached hereto as Exhibit A; and

**WHEREAS**, upon adoption of Ordinance 12-071, Master Condominium Unit 3 of the Project, known as Block 15901, Lot 15, Unit C0003, more commonly known by the street

address of 225 Morris Boulevard, was removed from the tax exemption, resulting in the Project consisting only of Master Condominium 1 and 2, (Unit 3 now to be a transferred title to the Boys and Girls Club, a nonprofit organization); and

**WHEREAS**, Unit 3 is not subject to a long term tax exemption and it not governed by the this Agreement or the Amended and Restated Financial Agreement; and

**WHEREAS**, on August 8, 2014, Grand LHN I filed an Application with the City pursuant to N.J.S.A. 40A:20-1 et. seq., seeking the City's consent to the transfer of ownership pursuant to Section 9.1 of the Amended and Restated Financial Agreement in part to Grand LHN I Urban Renewal, LLC, KRE 18 PARK Urban Renewal, LLC [KRE], and 18 Park Acquisition Urban Renewal, LLC [Acquisition], so that all three Entities would jointly and severally own Condominium Units 1 and 2 as Tenants in Common, which ownership restructure shall be governed by and between the entities according to a Tenancy in Common Agreement [TIC Agreement], which is annexed hereto; and

**WHEREAS**, the conveyance is conveyance is necessary in order to qualify as a 1031 Exchange in accordance with the Internal Revenue Service regulations; and

**WHEREAS**, Section 9.1 of the Amended and Restated Financial Agreement provides that even a transfer of a portion of ownership of the Project or assignment of the Amended and Restated Financial Agreement is null and void unless approved by the City in advance; and

**WHEREAS**, Section 9.1 of the Amended and Restated Financial Agreement further states that the City shall not unreasonably withhold its consent to the transfer of ownership provided (1) the new entities do not own any other Project subject to long term tax exemption at the time of transfer; (2) the new entities are formed and eligible to operate under the Law; (3) the Original Entity is not in default of the Amended and Restated Financial Agreement or the Law; (4) the obligations under the Agreement is fully and jointly and severally assumed by the new entities; and (5) Grand LHN I shall pay the City a transfer fee equal to 2% of the current Annual Service Charge as required by N.J.S.A. 40A:20-10d; and

**WHEREAS**, Grand LHN 1 will be the managing owner ("the Manager") and shall have the administrative responsibility, on behalf of all the entities for 1) making all payments to the City set forth in the Amended and Restated Financial Agreement, including the Annual Service Charge; 2) making payment of five percent (5%) of the Annual Service Charge to the City for remittance to the County; and 3) filing annually one consolidated audited financial statement

with the City on behalf of the entities, which shall be subject to audit at the entities' sole expense; and

**WHEREAS**, although Grand LHN I will assume the management duties, each entity shall be jointly and severally liable under the Amended and Restated Financial Agreement, and shall assume all obligations with respect to this Property under the Amended and Restated Financial Agreement, included but not limited to payment of all fees, charges, and interest; payment of Annual Service Charge, annual payment of excess profits, and payment of the County Service Charge; and filing of annual consolidated audited Financial Statements, and shall jointly and severally hold the City harmless from any liability associated with the ownership structure; and

**WHEREAS**, by adoption of Ordinance \_\_\_\_ on \_\_\_\_\_, the Municipal Council of the City of Jersey City consents to 1) the transfer of a portion of ownership interest of the Project to KRE and Acquisition, as Tenants in Common with Grand LHN I; 2) the assignment of the Amended and Restated Financial Agreement to KRE and Acquisition; 3) the assumption of the Amended and Restated Financial Agreement jointly and severally by the three Entities; and 4) City Business Administrator's execution of any documents necessary and appropriate to effectuate the foregoing.

**WHEREAS**, the parties hereto now seek to memorialize the City's consent to transfer a portion of ownership interest of the Project, and the assignment of the Amended and Restated Financial Agreement.

**NOW, THEREFORE**, it is hereby agreed by and between the parties as follows:

1. The City hereby authorizes, approves and consents to the application of Grand LHN I Urban Renewal LLC, an urban renewal company, formed and qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 et seq. a copy of which is on file in the office of the City Clerk, to convey the ownership of the Project on property designated as Block 15901, Lot 15 - Units 1 and 2, more commonly known by the street address of 18 Park Avenue, and more specifically described by metes and bounds in the application, to Grand LHN I Urban Renewal, LLC, KRE 18 PARK Urban Renewal, LLC, and 18 Park Acquisition Urban Renewal, LLC, jointly and severally, as Tenants in Common.

2. The Mayor or Business Administrator is hereby authorized to execute an Amended Financial Agreement, which at a minimum shall include the following terms and conditions:

- (a) Each entity shall own the Project and jointly and severally liable as Tenants in Common under the Amended and Restated Financial Agreement.
- (b) The City acknowledges that as of the date hereof, the names and the addresses of the Entities entitled to receive notice under and pursuant to paragraph 9.1 of the Amended and Restated Financial Agreement shall be amended as follows:

Grand LHN I Urban Renewal, LLC [Grand LHN I]  
520 US Highway 22, PO Box 6872  
Bridgewater, NJ 08807  
Attn: David B. Kahan

KRE 18 Park Urban Renewal, LLC [KRE]  
520 US Highway 22, PO Box 6872  
Bridgewater, NJ 08807  
Attn: David B. Kahan

18 Park Acquisition Urban Renewal, LLC [Acquisition]  
50 Washington Street  
Hoboken, NJ 07030  
Attn: Michael Barry

(3) The Amended and Restated Financial Agreement dated June 13, 2012, hereby remains in full force and effect. No charges otherwise due to the City under the Amended and Restated Financial Agreement are reduced hereby.

(4) Grand LHN I hereby consents to the assignment of the Amended and Restated Financial Agreement to KRE and Acquisition according to the percentage of ownership interest as allocated in the Tenancy in Common Agreement, annexed and made a part hereto.

(5) Grand LHN I, KRE and Acquisition shall jointly and severally assume all obligations which previously belonged solely to Grand LHN I under the Amended and Restated Financial Agreement. The Entities shall be jointly and severally liable under the Amended and Restated Financial Agreement for all the monetary and non-monetary obligations and duties enumerated in the Amended and Restated Financial Agreement. The Entities shall assume all risks with respect to the City's approval of the ownership structure for this Property.

(6) Grand LHN I, KRE and Acquisition shall jointly and severally defend and hold the City harmless from any liability associated with its joint ownership structure.



(7) The Entities shall file one annual consolidated audited financial statement with the City on behalf of the entities, which shall be subject to audit by the City at the entities' sole expense.

(8) Expenses shall be included as a deduction in the calculation of Excess Profits pursuant to the Amended and Restated Financial Agreement, except those of one Entity only, provided however, the City hereby acknowledges and agrees that the transfer of interest set forth herein shall not constitute a revenue or expense of any of the entities pursuant to the Amended and Restated Financial Agreement.

(9) Nothing associated with the transfer or conveyance of ownership interest shall alter the terms of the Amended and Restated Financial Agreement nor shall the transfer or conveyance of ownership interest negatively impact either the Annual Service Charge paid to the City, or the calculation or obligation to make annual payment of excess profits to the City, or the City's right or ability to collect any charges from the entities, individually or jointly.

**IN WITNESS WHEREOF**, the parties hereto have entered into this Agreement as of the date first set forth above.

**ATTESTED:**

**CITY OF JERSEY CITY**

\_\_\_\_\_  
**Robert Byrne**  
**City Clerk**

\_\_\_\_\_  
**Robert J. Kakoleski**  
**Business Administrator**

**WITNESS:**

**GRAND LHN I URBAN RENEWAL, LLC**

\_\_\_\_\_  
**By:**

**WITNESS:**

**KRE 18 PARK URBAN RENEWAL, LLC**

\_\_\_\_\_  
**By:**

**WITNESS:**

**18 PARK ACQUISITION URBAN  
RENEWAL, LLC**

\_\_\_\_\_  
**By:**

Rev. 5-02-12

Long Term Tax Exemption

N.J.S.A. 40A:20-1, et seq.

(Market Rate Residential Rental)

Re: 18 Park Avenue f/k/a  
175 Luis Marin Boulevard  
Approximately 1.83 Acres  
Block 15901, Lot 15, Units 1 and 2  
F/k/a Block 60.15, Lot 1  
Liberty Harbor North Redevelopment Plan

### **PREAMBLE**

**THIS AMENDED AND RESTATED FINANCIAL AGREEMENT**, [Agreement] is made the 13<sup>th</sup> day of June, 2012 by and between **GRAND LHN I URBAN RENEWAL LLC**, an urban renewal entity formed and qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 et seq., having its principal office at P.O. Box 6872, 520 Route 22, Bridgewater, New Jersey 08807 [Entity], and the **CITY OF JERSEY CITY**, a Municipal Corporation of the State of New Jersey, having its principal office at 280 Grove Street, Jersey City, New Jersey 07302 [City].

### **RECITALS**

#### **WITNESSETH:**

**WHEREAS**, the Entity is the Owner of certain property previously designated as Block 60.15, Lot 1, and now known as Block 15901, Lot 15 - Units 1 and 2, more commonly known by the street address of 18 Park Avenue, and more particularly described by the metes and bounds description set forth as Exhibit 1 to this Agreement; and

**WHEREAS**, this property is located within the boundaries of the Liberty Harbor North Redevelopment Plan Area; and

**WHEREAS**, on July 9, 2007, the Entity filed an Application for a long term tax exemption for a project consisting of an eight (8) and sixteen (16) story building containing approximately four hundred ninety eight (498) residential rental units with approximately twenty six thousand five hundred fifty four (26,554) square feet of ground floor retail space and up to five hundred twenty five (525) on site parking spaces to be located in the Property [Initial Project]; and

**WHEREAS**, by the adoption of Ordinance 07-148 on August 22, 2007, the Municipal Council granted a 10-year tax exemption to the Entity for the Initial Project and authorized the execution of a financial agreement; and

**WHEREAS**, pursuant to Ordinance 07-148, the Entity and the City entered into a financial agreement dated September 14, 2007 [Initial Financial Agreement], having a term equal to the earlier of fifteen (15) years from the date of adoption of Ordinance 07-148 or ten (10) years from the date of substantial completion of the Initial Project; and

**WHEREAS**, since entering into the Initial Financial Agreement, the Entity has: (i) obtained an Amended Preliminary and Final Site Plan Approval reducing the size and density of the Project and (ii) determined that it is developing the Property by way of a Master condominium containing three (3) Units and associated master common elements; and

**WHEREAS**, the Entity plans to construct a building that will be eleven (11) stories, containing approximately four hundred twenty two (422) residential rental units with approximately fourteen thousand three hundred ninety six (14,396) square feet of ground floor retail and/or restaurant space and two hundred fifty eight (258) on site parking spaces with a valet parking option, [Project]; and

**WHEREAS**, the Project will be located in Master Condominium Unit 1 and 2 in the Master Condominium; and

**WHEREAS**, on March 16, 2012, the Entity filed an Application with the City for an Amended and Restated Long Term Tax Exemption pursuant to N.J.S.A. 40A:20-1 et. seq. for the Project that would conform the tax exemption to the Project and permit an additional three (3) year build out period; and

**WHEREAS**, the City made the following findings:

- A. Relative Benefits of the Project when compared to the costs:
1. the current real estate tax generates revenue of only \$281,400, whereas, the Annual Service charge as estimated, and will generate revenue to the City of approximately \$1,144,735;
  2. the Entity has paid the City the sum of \$786,831, as an affordable housing contribution pursuant to Ordinance 03-112;

3. it is expected that the Project will create approximately 150 jobs during construction and 15 new permanent jobs;
4. the project should stabilize and contribute to the economic growth of existing local business and to the creation of new business, which cater to the new residents;
5. the Project will further the redevelopment objectives of the Liberty Harbor North Redevelopment Plan;
6. the City's impact analysis, on file with the Office of the City Clerk, indicates that the benefits of the Project outweigh the costs to the City; and

B. Assessment of the Importance of the Tax Exemption in obtaining development of the project and influencing the locational decisions of probable occupants:

1. the relative stability and predictability of the annual service charges will make the Project more attractive to investors and lenders needed to finance the Project; and
2. the relative stability and predictability of the service charges will allow the owner to stabilize its operating budget, allowing a high level of maintenance to the building over the life of the Project, which will insure the likelihood of the success of the Project and insure that it will have a positive impact on the surrounding area; and

WHEREAS, by the adoption of Ordinance 12-071 on May 23, 2012, the Municipal Council approved the above findings and the amended and restated tax exemption application and authorized the execution of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

#### **ARTICLE I - GENERAL PROVISIONS**

##### **Section 1.1 Governing Law**

This Agreement shall be governed by the provisions of the Long Term Tax Exemption Law, as amended and supplemented, N.J.S.A. 40A:20-1 et seq., Executive Order of the Mayor, 02-003, Ordinance 02-075, and Ordinance 12-071, which authorized the execution of this Agreement. It being expressly understood and agreed that the City expressly relies upon the facts, data, and representations contained in the Application, attached hereto as Exhibit 3, in granting this tax

exemption.

## **Section 1.2 General Definitions**

Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement, the following terms shall have the following meanings:

- i. Allowable Net Profit- The amount arrived at by applying the Allowable Profit Rate to Total Project Cost pursuant to N.J.S.A. 40A:20-3(c).
- ii. Allowable Profit Rate - The greater of 12% or the percentage per annum arrived at by adding 1.25% to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge, if payable on a per annum basis, shall be considered as interest for this purpose. If there is no permanent mortgage financing, or if the financing is internal or undertaken by a related party, the Allowable Profit Rate shall be the greater of 12% or the percentage per annum arrived at by adding 1.25% per annum to the interest rate per annum which the municipality determines to be the prevailing rate on mortgage financing on comparable improvements in Hudson County. The provisions of N.J.S.A. 40A:20-3(b) are incorporated herein by reference.
- iii. Gross Revenue - Any and all revenue derived from or generated by the Project of whatever kind or amount, whether received as rent from any tenants or income or fees from third parties, including but not limited to fees or income paid or received for parking, laundry, health club user fees or other services (such as lease premiums for views, fireplaces, etc.). No deductions will be allowed for operating or maintenance costs, including, but not limited to gas, electric, water and sewer, other utilities, garbage removal and insurance charges, whether paid for by the landlord, tenant or a third party, except for customary operating expenses of commercial tenants such as utilities, insurance and taxes (including payments in lieu of taxes) which shall be deducted from Gross Revenue based on the actual amount of such costs incurred.
- iv. Annual Service Charge - The amount the Entity has agreed to pay the City for municipal services supplied to the Project, which sum is in lieu of any taxes on the Improvements, pursuant to N.J.S.A. 40A:20-12.
- v. Auditor's Report - A complete financial statement outlining the financial status of the

Project (for a period of time as indicated by context), which shall also include a certification of Total Project Cost and clear computation of Net Profit. The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles and shall contain at a minimum the following: a balance sheet, a statement of income, a statement of retained earnings or changes in stockholders' equity, a statement of cash flows, descriptions of accounting policies, notes to financial statements and appropriate schedules and explanatory material results of operations, cash flows and any other items required by Law. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

vi. Certificate of Occupancy - A document, whether temporary or permanent, issued by the City authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133.

vii. Debt Service - The amount required to make annual payments of principal and interest or the equivalent thereof on any construction mortgage, permanent mortgage or other financing including returns on institutional equity financing and market rate related party debt for the project for a period equal to the term of this agreement.

viii. Default - Shall be a breach of or the failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Agreement, or under the Law, beyond any applicable grace or cure periods.

ix. Entity - The term Entity within this Agreement shall mean Grand LHN I Urban Renewal LLC, which Entity is formed and qualified pursuant to N.J.S.A. 40A:20-5. It shall also include any subsequent purchasers or successors in interest of the Project, provided they are formed and operate under the Law.

x. Improvements or Project - Any building, structure or fixture permanently affixed to the land and to be constructed and tax exempted under this Agreement.

xi. In Rem Tax Foreclosure or Tax Foreclosure - A summary proceeding by which the City may enforce a lien for taxes due and owing by tax sale, under N.J.S.A. 54:5-1 to 54:5-129 et seq.

xii. Land Taxes - The amount of taxes assessed on the value of land, on which the project is located and, if applicable, taxes on any pre-existing improvements. Land Taxes are not exempt;

however, Land Taxes are applied as a credit against the Annual Service Charge.

xiii. Land Tax Payments - Payments made on the quarterly due dates, including approved grace periods if any, for Land Taxes as determined by the Tax Assessor and the Tax Collector.

xiv. Law - Law shall refer to the Long Term Tax Exemption Law, as amended and supplemented, N.J.S.A. 40A:20-1, et seq.; Executive Order of the Mayor 02-003, relating to long term tax exemption, as it may be amended and supplemented; Ordinance 02-075, Ordinance 07-148, and Ordinance 12-071, which authorized the execution of this Agreement and all other relevant Federal, State or City statutes, ordinances, resolutions, rules and regulations.

xv. Lease Up Period - Shall begin on the first day of the month following the issuance of the first Certificate of Occupancy (whether permanent or temporary) for the Project (Lease Up Date). During the Lease Up Period, the Entity shall pay the sum equal to the estimated Annual Service Charge divided by the number of units divided by 12 for each month at the rate of 24 units per month for the first month and an additional 24 units each month thereafter for the next 5 months after the Lease Up Date and thereafter at the rate of 23 additional units per month for the 7<sup>th</sup> month through the 18<sup>th</sup> month after Lease Up Date, whether or not the units are actually occupied or generate revenue. The Lease Up Period for the Project expires 18 calendar months after the Lease Up Date.

xvi. Minimum Annual Service Charge - The Minimum Annual Service Charge shall be the greater of:

(a) the amount of the total taxes levied against all real property in the area covered by the Project in the last full tax year in which the area was subject to taxation, or in the case of tax exempt property, the projected tax levy based upon the assessed value for the year in which the application is filed, which amount the parties agree is \$281,400; or

(b) the sum of \$1,144,735 per year, which sum will be prorated only in the years in which Substantial Completion occurs and this Agreement terminates.

The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge, calculated pursuant to N.J.S.A. 40A:20-12 or this Agreement, would be less than the Minimum Annual Service Charge.

xvii. Net Profit - The Gross Revenues of the Entity less all operating and non-operating

expenses of the Entity, all determined in accordance with generally accepted accounting principles, but:

(1) there shall be included in expenses: (a) all Annual Service charges paid pursuant to N.J.S.A. 40A:20-12; (b) all payments to the City of excess profits pursuant to N.J.S.A. 40A:20-15 or N.J.S.A. 40A:20-16; (c) an annual amount sufficient to amortize (utilizing the straight line method-equal annual amounts) the Total Project Cost and all capital costs determined in accordance with generally accepted accounting principles, of any other entity whose revenue is included in the computation of excess profits over the term of this agreement; (d) all reasonable annual operating expenses of the Entity and any other entity whose revenue is included in the computation of excess profits including the cost of all management fees, brokerage commissions, insurance premiums, all taxes or service charges paid, legal, accounting, or other professional service fees, utilities, building maintenance costs, building and office supplies and payments into repair or maintenance reserve accounts; (e) all payments of rent including but not limited to ground rent by the Entity; (f) all debt service; and

(2) there shall not be included in expenses either depreciation or obsolescence, interest on debt, except interest which is part of debt service, income taxes or salaries, bonuses or other compensation paid, directly or indirectly to directors, officers and stockholders of the entity, or officers, partners or other persons holding a proprietary ownership interest in the entity.

xviii. Pronouns - He or it shall mean the masculine, feminine or neuter gender, the singular, as well as the plural, as context requires.

xix. Substantial Completion - The determination by the City that the Project, in whole or in part, is ready for the use intended, which ordinarily shall mean the date on which the Project receives, or is eligible to receive any Certificate of Occupancy for any portion of the Project.

xx. Termination - Any act or omission which by operation of the terms of this Financial Agreement shall cause the Entity to relinquish its tax exemption.

xxi. Total Project Cost - The total cost of constructing the Project through the date a Certificate(s) of Occupancy is issued for the entire Project, which categories of cost are set forth in N.J.S.A. 40A:20-3(h). There shall be included in Total Project Cost the actual costs incurred by the Entity and certified by an independent and qualified architect or engineer, which are associated with



site remediation and cleanup of environmentally hazardous materials or contaminants in accordance with State or Federal law and any extraordinary costs incurred including the cost of demolishing structures, relocation or removal of public utilities, cost of relocating displaced residents or buildings and the clearing of title. The Entity agrees that final Total Project Cost shall not be less than its estimated Total Project Cost.

## **ARTICLE II - APPROVAL**

### **Section 2.1 Approval of Tax Exemption**

The City hereby grants its approval for a tax exemption for all the Improvements to be constructed and maintained in accordance with the terms and conditions of this Agreement and the provisions of the Law which Improvements shall be constructed on certain property known on the Official Tax Assessor's Map of the City as: Block 60.15, Lot 1, and now known as Block 15901, Lot 15 - Units 1 and 2, more commonly known by the street address of 18 Park Avenue, and described by metes and bounds in Exhibit 1 attached hereto.

### **Section 2.2 Approval of Entity**

Approval is granted to the Entity whose Certificate of Formation is attached hereto as Exhibit 4. Entity represents that its Certificate contains all the requisite provisions of the Law; has been reviewed and approved by the Commissioner of the Department of Community Affairs; and has been filed with, as appropriate, the Office of the State Treasurer or Office of the Hudson County Clerk, all in accordance with N.J.S.A. 40A:20-5.

### **Section 2.3 Improvements to be Constructed**

Entity represents that it will construct a building that will be eleven (11) stories, containing approximately four hundred twenty two (422) residential rental units with approximately fourteen thousand three hundred ninety six (14,396) square feet of ground floor retail and restaurant space and two hundred fifty eight (258) on site parking spaces with a valet parking option, all of which is specifically described in the Application attached hereto as Exhibit 3.

### **Section 2.4 Construction Schedule**

The Entity agrees to diligently undertake to commence construction and complete the Project in accordance with the Estimated Construction Schedule, attached hereto as Exhibit 5.

### **Section 2.5 Ownership, Management and Control**

The Entity represents that it is the owner of the property upon which the Project is to be constructed. Upon construction, the Entity represents that the Improvements will be managed and controlled as follows:

The Entity represents that it is the owner of the Land upon which the project is to be constructed and will manage and control the Project. The City acknowledges that the Entity may enter into a management agreement for the Project and will pay a management fee, which fee was disclosed in its tax exemption application. The City acknowledges that the Entity may enter into future management agreements so long as such agreements are not used to reduce the City's economic benefits under this Agreement and the management fees to be paid are comparable to those disclosed in the application.

### **Section 2.6 Financial Plan**

The Entity represents that the Improvements shall be financed in accordance with the Financial Plan attached hereto as Exhibit 6. The Plan sets forth estimated Total Project Cost, the amortization rate on the Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, and the terms of any mortgage amortization.

### **Section 2.7 Statement of Rental Schedules and Lease Terms**

The Entity represents that its good faith projections of the initial rental schedules and lease terms are set forth in Exhibit 7.

## **ARTICLE III - DURATION OF AGREEMENT**

### **Section 3.1 Term**

So long as there is compliance with the Law and this Agreement, it is understood and agreed by the parties hereto that this Agreement shall remain in effect for the earlier of 13 years from the date of the adoption of Ordinance 12-071 on May 23, 2012, which approved the amendment to the tax exemption or 10 years from the date of Substantial Completion of the Project. The tax exemption shall only be effective during the period of usefulness of the Project and shall continue in force only while the Project is owned by a corporation or association formed and operating under the Law.

## **ARTICLE IV - ANNUAL SERVICE CHARGE**

### **Section 4.1 Annual Service Charge**

In consideration of the tax exemption, the Entity shall make the following payments to the City:

(i) City Service Charge: an amount equal to the greater of: the Minimum Annual Service Charge or an Annual Service Charge equal to 10% of the Annual Gross Revenue. The Annual Service Charge shall be billed initially based upon the Entity's estimates of Annual Gross Revenue which shall not be less than the its estimate of Gross Revenue as set forth in its Financial Plan, attached hereto as Exhibit 6. Thereafter, the Annual Service Charge shall be adjusted in accordance with this Agreement.

A Minimum Annual Service Charge shall be due beginning on the effective date of this Agreement. The Annual Service Charge shall be due on the first day of the month following the Substantial Completion of the Project. In the event the Entity fails to timely pay the Minimum Annual Service Charge or the Annual Service Charge, the unpaid amount shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on land until paid.

Notwithstanding anything herein to the contrary, upon Substantial Completion, the Minimum Annual Service Charge shall be prorated in accordance with Section 1.2(xvi)(b) and the Lease Up Period.

(ii) County Service Charge: an amount equal to 5% of the Annual Service Charge upon receipt of that charge, for remittance to the County by the City.

### **Section 4.2 Staged Adjustments**

The Annual Service Charge shall be adjusted, in Stages over the term of the tax exemption in accordance with N.J.S.A. 40A:20-12(b) as follows:

- i. Stage One: From the 1st day of the month following Substantial Completion until the last day of the 6th year, the Annual Service Charge shall be 10% of Annual Gross Revenue;
- ii. Stage Two: Beginning on the 1<sup>st</sup> day of the 7th year following Substantial Completion until the last day of the 7<sup>th</sup> year, an amount equal to the greater of the Annual Service Charge or 20% of the amount of the taxes otherwise due on the value of the land and Improvements;

iii. Stage Three: Beginning on the 1st day of the 8<sup>th</sup> year following the Substantial Completion until the last day of the 8<sup>th</sup> year, an amount equal to the greater of the Annual Service Charge or 40% of the amount of the taxes otherwise due on the value of the land and Improvements;

iv. Stage Four: Beginning on the 1st day of the 9<sup>th</sup> year following Substantial Completion until the last day of the 9<sup>th</sup> year, an amount equal to the greater of the Annual Service Charge or 60% of the amount of the taxes otherwise due on the value of the land and Improvements.

v. Final Stage: Beginning on the 1st day of the 10<sup>th</sup> year following Substantial Completion through the date the tax exemption expires, an amount equal to the greater of the Annual Service Charge or 80% of the amount of the taxes otherwise due on the value of the land and Improvements.

#### **Section 4.3 Credits**

The Entity is required to pay both the Annual Service Charge and the Land Tax Payments. The Entity is obligated to make timely Land Tax Payments, including any tax on the pre-existing improvements, in order to be entitled to a Land Tax credit against the Annual Service Charge for the subsequent year. The Entity shall be entitled to credit for the amount, without interest, of the Land Tax Payments made in the last four preceding quarterly installments against the Annual Service Charge. In any quarter that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any Land Tax Payment credits against the Annual Service Charge for that quarter. No credit will be applied against the Annual Service Charge for partial payments of Land Taxes. In addition, the City shall have, among this remedy and other remedies, the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or declare a Default and terminate this Agreement.

#### **Section 4.4 Quarterly Installments**

The Entity expressly agrees that the Annual Service Charge shall be made in quarterly installments on those dates when real estate tax payments are due; subject, nevertheless, to adjustment for over or underpayment within thirty (30) days after the close of each calendar year. In the event that the Entity fails to pay the Annual Service Charge, the unpaid amount shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid.

#### **Section 4.5 Administrative Fee**

The Entity shall also pay an annual Administrative Fee to the City in addition to the Annual Service Charge and Land Tax levy. The Administrative Fee shall be calculated as two (2%) percent of each prior year's Annual Service Charge. This fee shall be payable and due on or before December 31st of each year, and collected in the same manner as the Annual Service Charge. In the event that the Entity fails to timely pay the Administrative Fee, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid.

#### **Section 4.6 Affordable Housing Contribution and Remedies**

A. **Contribution.** The Entity will have paid the City the sum of \$786,831, which is the amount stipulated in the Initial Financial Agreement, before the within Amended Agreement is executed, which amount constitutes payment in full of the contribution due under Ordinance 03-112.

#### **Section 4.7 Material Conditions**

It is expressly agreed and understood that the timely payments of Land Taxes, Minimum Annual Service Charges, Annual Service Charges, including adjustments thereto, Administrative Fees, Affordable Housing Contributions, and any interest thereon, are Material Conditions of this Agreement.

### **ARTICLE V - PROJECT EMPLOYMENT AND CONTRACTING AGREEMENT**

#### **Section 5.1 Project Employment and Contracting Agreement**

In order to provide City residents and businesses with certain employment and other economic related opportunities, the Entity is subject to the terms and conditions of the Project Employment and Contracting Agreement, attached hereto as Exhibit 8. In addition, the Entity shall execute a Project Labor Agreement as required by Ordinance 07-123 as it exists or as it may be amended from time to time.

### **ARTICLE VI - CERTIFICATE OF OCCUPANCY**

#### **Section 6.1 Certificate of Occupancy**

It is understood and agreed that it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a timely manner so as to complete construction in accordance with the proposed construction schedule attached hereto as Exhibit 5. The failure to secure the Certificates

of Occupancy shall subject the property to full taxation for the period between the date of Substantial Completion and the date the Certificate of Occupancy is obtained.

#### **Section 6.2 Filing of Certificate of Occupancy**

It shall be the primary responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of each Certificate of Occupancy.

Failure of the Entity to file such issued Certificate of Occupancy as required by the preceding paragraph, shall not militate against any action or non-action, taken by the City, including, if appropriate retroactive billing with interest for any charges determined to be due, in the absence of such filing by the Entity.

### **ARTICLE VII - ANNUAL REPORTS**

#### **Section 7.1 Accounting System**

The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles.

#### **Section 7.2 Periodic Reports**

A. An Auditor's Report: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis that the Agreement shall continue in effect, the Entity shall submit to the Mayor and Municipal Council and the NJ Division of Local Government Services in the Department of Community Affairs, its Auditor's Report for the preceding fiscal or calendar year. The Auditor's Report shall include, but not be limited to: the terms and interest rate on any mortgage(s) associated with the purchase or construction of the Project and such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Law and this Agreement. The Report shall clearly identify and calculate the Net Profit for the Entity during the previous year.

B. Disclosure Statement: On the anniversary date of the execution of this Agreement, and each and every year thereafter while this agreement is in effect, the Entity shall submit to the Municipal Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, a Disclosure Statement listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each and such additional information as the City may request from time to time.

### **Section 7.3 Inspection/Audit**

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project and, if deemed appropriate or necessary, any other related Entity by representatives duly authorized by the City and the NJ Division of Local Government Services in the Department of Community Affairs. It shall also permit, upon request, examination and audit of its books, contracts, records, documents and papers. Such examination or audit shall be made during the reasonable hours of the business day, in the presence of an officer or agent designated by the Entity.

All costs incurred by the City to conduct the audit, including reasonable attorneys' fees if appropriate, shall be billed to the Entity and paid to the City as part of the Entity's Annual Service Charge. Delinquent payments shall accrue interest at the same rate as for a delinquent service charge.

## **ARTICLE VIII- LIMITATION OF PROFITS AND RESERVES**

### **Section 8.1 Limitation of Profits and Reserves**

During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits pursuant to the provisions of N.J.S.A. 40A:20-15.

The Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount equal to five (5%) percent of the Gross Revenue of the Entity for the last full fiscal year preceding the year and may retain such part of the excess Net Profits as is necessary to eliminate a deficiency in that reserve, as provided in N.J.S.A. 40A:20-15. The reserve is to be non-cumulative, it being intended that no further credits thereto shall be permitted after the reserve shall have attained the allowable level of five (5%) percent of the preceding year's Gross Revenue.

### **Section 8.2 Annual Payment of Excess Net Profit**

In the event the Net Profits of the Entity, in any fiscal year, shall exceed the Allowable Net Profits for such period, then the Entity, within one hundred and twenty (120) days after the end of such fiscal year, shall pay such excess Net Profits to the City as an additional Annual Service Charge; provided, however, that the Entity may maintain a reserve as determined pursuant to aforementioned paragraph 8.1. The calculation of the Entity's excess Net Profits shall include those

project costs directly attributable to site remediation and cleanup expenses and any other costs excluded in the definition of Total Project Cost in Section 1.2 (xxi) of this Agreement even though those costs may have been deducted from the project costs for purposes of calculating the Annual Service Charge.

### **Section 8.3 Payment of Reserve/ Excess Net Profit Upon Termination, Expiration or Sale**

The date of Termination, expiration or sale shall be considered to be the close of the fiscal year of the Entity. Within ninety (90) days after such date, the Entity shall pay to the City the amount of the reserve, if any, maintained by it pursuant to this section and the excess Net Profit, if any.

## **ARTICLE IX - ASSIGNMENT AND/OR ASSUMPTION**

### **Section 9.1 Approval**

Any sale or transfer of the Project, shall be void unless approved in advance by Ordinance of the Municipal Council. It is understood and agreed that the City, on written application by the Entity, will not unreasonably withhold its consent to a sale of the Project and the transfer of this Agreement provided 1) the new Entity does not own any other Project subject to long term tax exemption at the time of transfer; 2) the new Entity is formed and eligible to operate under the Law; 3) the Entity is not then in default of this Agreement or the Law; 4) the Entity's obligations under this Agreement is fully assumed by the new Entity, 5) the Entity shall pay the City a transfer fee equal to 2% of the then current Annual Service Charge as required by N.J.S.A. 40A:20-10d.

### **Section 9.2 Fee**

Where the consent or approval of the City is sought for approval of a change in ownership or sale or transfer of the Project, the Entity shall be required to pay to the City a new tax exemption application fee for the legal and administrative services of the City, as it relates to the review, preparation and/or submission of documents to the Municipal Council for appropriate action on the requested assignment. The fee shall be non-refundable.

## **ARTICLE X - COMPLIANCE**

### **Section 10.1 Operation**

During the term of this Agreement, the Project shall be maintained and operated in accordance with the provisions of the Law. The operation of Project under this Agreement shall not only be terminable as provided by N.J.S.A. 40A:20-1, et seq., as currently amended and



supplemented, but also by a Default under this Agreement. The Entity's failure to comply with the Law shall constitute a Default under this Agreement and the City shall, among its other remedies, have the right to terminate the tax exemption.

#### **Section 10.2 Disclosure of Lobbyist Representative**

During the term of this Agreement, the Entity must comply with Executive Order 2002-005, and Ordinance 02-075, requiring Written Disclosure of Lobbyist Representative Status. The Entity's failure to comply with the Executive Order or the Ordinance shall constitute a Default under this Agreement and the City shall, among its other remedies, have the right to terminate the tax exemption.

### **ARTICLE XI - DEFAULT**

#### **Section 11.1 Default**

Default shall be failure of the Entity to conform with the terms of this Agreement or failure of the Entity to perform any obligation imposed by the Law, beyond any applicable notice, cure or grace period.

#### **Section 11.2 Cure Upon Default**

Should the Entity be in Default, the City shall send written notice to the Entity of the Default [Default Notice]. The Default Notice shall set forth with particularity the basis of the alleged Default. The Entity shall have sixty (60) days, from receipt of the Default Notice, to cure any Default which shall be the sole and exclusive remedy available to the Entity. However, if, in the reasonable opinion of the City, the Default cannot be cured within sixty (60) days using reasonable diligence, the City will extend the time to cure.

Subsequent to such sixty (60) days, or any approved extension, the City shall have the right to terminate this Agreement in accordance with Section 12.1.

Should the Entity be in default due to a failure to pay any charges defined as Material Conditions in Section 4.7, the Entity shall not be subject to the default procedural remedies as provided herein but shall allow the City to proceed immediately to terminate the Agreement as provided in Section 12.1 herein.

#### **Section 11.3 Remedies Upon Default**

The City shall, among its other remedies, have the right to proceed against the property

pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or may declare a Default and terminate this Agreement. Any default arising out of the Entity's failure to pay Land Taxes, the Minimum Annual Service Charge, Administrative Fees, Affordable Housing Contribution, or the Annual Service Charges shall not be subject to the default procedural remedies as provided in Article XI herein, but shall allow the City to proceed immediately to terminate the Agreement as provided in Article XII. All of the remedies provided in this Agreement to the City, and all rights and remedies granted to it by law and equity shall be cumulative and concurrent. No termination of any provision of this Agreement shall deprive the City of any of its remedies or actions against the Entity because of its failure to pay Land Taxes, the Minimum Annual Service Charge, Annual Service Charge, Affordable Housing Contribution or Administrative Fees. This right shall apply to arrearages that are due and owing at the time or which, under the terms hereof, would in the future become due as if there had been no termination. Further, the bringing of any action for Land Taxes, the Minimum Annual Service Charge, the Annual Service Charge, Affordable Housing Contribution, Administrative Fees, or for breach of covenant or the resort to any other remedy herein provided for the recovery of Land Taxes shall not be construed as a waiver of the rights to terminate the tax exemption or proceed with a tax sale or Tax Foreclosure action or any other specified remedy.

In the event of a Default on the part of the Entity to pay any charges set forth in Article IV, the City among its other remedies, reserves the right to proceed against the Entity's land and property, in the manner provided by the In Rem Foreclosure Act, and any act supplementary or amendatory thereof. Whenever the word taxes appear, or is applied, directly or impliedly to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as is pertinent to this Agreement, as if the charges were taxes or municipal liens on land.

## **ARTICLE XII- TERMINATION**

### **Section 12.1 Termination Upon Default of the Entity**

In the event the Entity fails to cure or remedy the Default within the time period provided in Section 11.2, the City may terminate this Agreement upon thirty (30) days written notice to the Entity [Notice of Termination].

### **Section 12.2 Voluntary Termination by the Entity**

The Entity may after the expiration of one year from the Substantial Completion of the

Project notify the City that as of a certain date designated in the notice, it relinquishes its status as a tax exempt Project. As of the date so set, the tax exemption, the Annual Service Charges and the profit and dividend restrictions shall terminate.

### **Section 12.3 Final Accounting**

Within ninety (90) days after the date of termination, whether by affirmative action of the Entity or by virtue of the provisions of the Law or pursuant to the terms of this Agreement, the Entity shall provide a final accounting and pay to the City the reserve, if any, pursuant to the provisions of N.J.S.A. 40A:20-13 and 15 as well as any excess Net Profits. For purposes of rendering a final accounting the termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

### **Section 12.4 Conventional Taxes**

Upon Termination or expiration of this Agreement, the tax exemption for the Project shall expire and the land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the City.

## **ARTICLE XIII - DISPUTE RESOLUTION**

### **Section 13.1 Arbitration**

In the event of a breach of the within Agreement by either of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve the dispute in such fashion as will tend to accomplish the purposes of the Law. In the event the Superior Court shall not entertain jurisdiction, then the parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of the Long Term Tax Exemption Law. The cost for the arbitration shall be borne equally by the parties. The parties agree that the Entity may not file an action in Superior Court or with the Arbitration Association unless the Entity has first paid in full all charges defined in Article IV, Section 4.7 as Material Conditions.

## **ARTICLE XIV - WAIVER**

### **Section 14.1 Waiver**

Nothing contained in this Financial Agreement or otherwise shall constitute a waiver or

relinquishment by the City of any rights and remedies, including, without limitation, the right to terminate the Agreement and tax exemption for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery of any amount which the City has under law, in equity, or under any provision of this Agreement.

#### **ARTICLE XV - INDEMNIFICATION**

##### **Section 15.1 Defined**

It is understood and agreed that in the event the City shall be named as party defendant in any action alleging any breach, default or a violation of any of the provisions of this Agreement and/or the provisions of N.J.S.A. 40A:20-1 et seq., the Entity shall indemnify and hold the City harmless against any and all liability, loss, cost, expense (including reasonable attorneys' fees and costs, through trial and all stages of any appeal, including the cost of enforcing this indemnity) arising out of Agreement. In addition, the Entity expressly waives all statutory or common law defenses or legal principles which would defeat the purposes of this indemnification. The Entity also agrees to defend the suit at its own expense. However, the City maintains the right to intervene as a party thereto, to which intervention the Entity consents; the expense thereof to be borne by the City.

#### **ARTICLE XVI- NOTICE**

##### **Section 16.1 Certified Mail**

Any notice required hereunder to be sent by either party to the other shall be sent by certified or registered mail, return receipt requested.

##### **Section 16.2 Sent by City**

When sent by the City to the Entity the notice shall be addressed to:

Grand LHN I Urban Renewal LLC  
P.O. Box 6872  
520 Route 22  
Bridgewater, New Jersey 08807  
Att: David Kahan, Esq.

and

Connell Foley, LLP  
Harborside Financial Center  
2510 Plaza Five  
Jersey City, N.J. 07311-4029  
Att: James C. McCann, Esq.

unless prior to giving of notice the Entity shall have notified the City in writing otherwise.

In addition, provided the City is sent a formal written notice in accordance with this Agreement, of the name and address of Entity's Mortgagee, the City agrees to provide such Mortgagee with a copy of any notice required to be sent to the Entity.

### **Section 16.3 Sent by Entity**

When sent by the Entity to the City, it shall be addressed to:

City of Jersey City, Office of the City Clerk  
City Hall  
280 Grove Street  
Jersey City, New Jersey 07302,

with copies sent to the Corporation Counsel, the Business Administrator, and the Tax Collector unless prior to the giving of notice, the City shall have notified the Entity otherwise. The notice to the City shall identify the Project to which it relates, (i.e., the Urban Renewal Entity and the Property's Block and Lot number).

## **ARTICLE XVII-SEVERABILITY**

### **Section 17.1 Severability**

If any term, covenant or condition of this Agreement or the Application, except a Material Condition, shall be judicially declared to be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

If a Material Condition shall be judicially declared to be invalid or unenforceable and provided the Entity is not in Default of this Agreement, the parties shall cooperate with each other to take the actions reasonably required to restore the Agreement in a manner contemplated by the parties and the Law. This shall include, but not be limited to the authorization and re-execution of this Agreement in a form reasonably drafted to effectuate the original intent of the parties and the Law. However, the City shall not be required to restore the Agreement if it would modify a Material Condition, the amount of the periodic adjustments or any other term of this Agreement which would result in any economic reduction or loss to the City.

## **ARTICLE XVIII - MISCELLANEOUS**

### **Section 18.1 Construction**

This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, and without regard to or aid of any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Entity and the City have combined in their review and approval of same.

### **Section 18.2 Conflicts**

The parties agree that in the event of a conflict between the Application and the language contained in the Agreement, the Agreement shall govern and prevail. In the event of conflict between the Agreement and the Law, the Law shall govern and prevail.

### **Section 18.3 Oral Representations**

There have been no oral representations made by either of the parties hereto which are not contained in this Agreement. This Agreement, the Ordinance authorizing the Agreement, and the Application constitute the entire Agreement between the parties and there shall be no modifications thereto other than by a written instrument approved and executed by both parties and delivered to each party.

### **Section 18.4 Entire Document**

This Agreement and all conditions in the Ordinance of the Municipal Council approving this Agreement are incorporated in this Agreement and made a part hereof.

### **Section 18.5 Good Faith**

In their dealings with each other, utmost good faith is required from the Entity and the City.

### **Section 18.6 Prior Agreement**

This Agreement replaces and supersedes, in all respects, the Initial Financial Agreement between the City and the Entity, and the parties hereto mutually declare such Initial Financial Agreement to be a nullity.

## **ARTICLE XIX - EXHIBITS**

### **Section 19. Exhibits**

The following Exhibits are attached hereto and incorporated herein as if set forth at length

herein:

1. Metes and Bounds description of the Project;
2. Ordinance of the city authorizing the execution of this Agreement;
3. The application with Exhibits;
4. Certificate of the Entity;
5. Estimated Construction Schedule;
6. The Financial Plan for the undertaking of the Project;
7. Good Faith Estimate of Initial Rental Schedule and Lease Terms;
8. Project Employment and Contracting Agreement;
9. Architect's Certification of Actual Construction Costs.

**IN WITNESS WHEREOF**, the parties have caused these presents to be executed the day and year first above written.

**WITNESS:**

**GRAND LHN I URBAN RENEWAL LLC**

By: S/K Liberty Harbor North Associates, LLC

By: Majic Investment Corp., Manager

By:   
Murray Kushner, President

**ATTEST:**

**CITY OF JERSEY CITY**



**ROBERT BYRNE**  
**CITY CLERK**



**JOHN KELLY**  
**BUSINESS ADMINISTRATOR**

OFFICE  
GLENPOINTE CENTRE WEST  
500 FRANK W. BURR BLVD. SUITE 31  
TEANECK, NEW JERSEY 07666  
T: 201.928.1100 F: 201.928.0588  
WWW.DECOTIISLAW.COM

DIRECT  
MATTHEW C. KARRENBERG, ESQ.  
MKARRENBERG@DECOTIISLAW.COM  
201.347.2139

August 8, 2014

Diana Jeffrey  
City of Jersey City  
City of Hall  
280 Grove Street, 3<sup>rd</sup> Floor  
Jersey City, NJ 07302

Re: Grand LHN I Urban Renewal – City of Jersey City, New Jersey  
18 Park Avenue f/k/a 175 Luis Marin Boulevard

Dear Ms. Jeffrey:

We represent the interests of Grand LHN I Urban Renewal, LLC ("Grand") in connection with the above-referenced matter.

Grand entered into an Amended and Restated Financial Agreement with the City of Jersey City, dated June 13, 2012, pertaining to the property known as 18 Park, Lot 1, Block 60.15. Section 9.1 of the Financial Agreement regulates transfers of the Agreement.

Currently, Grand has two members: S/K Liberty Harbor North Associates LLC (50%) and Applied Liberty Harbor LLC (50%). Each of the foregoing members is owned/controlled by the Kushner and Barry families respectively. For other business purposes, the principals of Grand are restructuring the ownership of the property such that two (2) newly formed UREs also owned/controlled by the Kushner and Barry families respectively will become tenant in common owners along with Grand. As set forth in the attached organizational chart, the fee ownership of the property will consist of 3 "tenants in common" as follows:

- Grand (3%)
- KRE 18 Park Urban Renewal LLC (48.5%)
- 18 Park Acquisition Urban Renewal LLC (48.5%)

Please note that the managing entity on behalf of the entire ownership shall be the existing owner, Grand. As the managing entity, with respect to the Financial Agreement, Grand will continue to collect all receipts and remit all expenses of the project, and its books will





continue to reflect all of the operational activity of the project. Accordingly, any calculations based on the profits and losses will remain the same after the planned restructure.

In accordance with Section 9.1, we request the Council's approval of the subject transfers. The newly formed entities comport with the requirements of the subject section. Please be advised that the \$9,500 application fee as required pursuant to Section 9.2 will be forwarded directly to you by Grand.

Kindly provide any questions that you may have, and please place this matter on the Agenda for August 20, 2014. Thank you.

Very truly yours,



Matthew C. Karrenberg

MCK:dc

Via Email Only

cc Grand LHN I Urban Renewal  
Jeremy Farrell, Esq., Corporation Counsel  
Michael R. DeCotiis, Esq.

18 Park

NEW OWNERSHIP

CONDO I - Residential

Grand LHN I Urban Renewal LLC  
(3%)

KRE 18 Park Urban Renewal Associates LLC  
(48.5%)

18 Park Acquisition Urban Renewal LLC  
(48.5%)

CONDO II - Retail

Grand LHN I Urban Renewal LLC  
(3%)

KRE 18 Park Urban Renewal Associates LLC  
(48.5%)

18 Park Acquisition Urban Renewal LLC (48.5%)

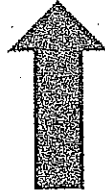
EXISTING OWNERSHIP

CONDO I - Residential

Grand LHN I Urban Renewal LLC  
(100%)

CONDO II - Retail

Grand LHN I Urban Renewal LLC  
(100%)



# EXISTING OWNERSHIP

Vs.

# NEW TIC OWNERSHIP

GRAND LHM URBAN RENEWAL LLC	100.00%	NEW TIC OWNERSHIP (CONSOLIDATED)	100.00%
S/K Liberty Harbor North Associates, LLC	50.00%	TOTAL OF KRE GROUP ENTITIES	50.00%
Manager:			
Majo Investment Corp.			
Shareholder:			
Officers:			
Murray Kushner	President/Treasurer		
Murray Kushner			
Jonathan Kushner	Vice President/Secretary		
Members:		Members:	
Murray Kushner	10.75%	Murray Kushner	20.80%
The Jonathan C. Kushner Revocable Trust	12.00%	The Jonathan C. Kushner Revocable Trust	18.44%
Aryeh Kushner	2.00%	Aryeh Kushner	0.06%
Aryeh Kushner Trust II	3.50%	Aryeh Kushner Trust II	5.08%
Jonathan Kushner Trust II	3.50%	Jonathan Kushner Trust II	5.00%
Marc S. Seiwitz Kushner Trust II	3.50%	Marc S. Seiwitz Kushner Trust II	5.09%
Melissa L. Seiwitz Kushner Trust II	3.50%	Melissa L. Seiwitz Kushner Trust II	5.09%
49 Maybury LLC	6.25%	49 Maybury LLC	0.19%
Charles Scheinman	1.50%	Charles Scheinman	0.05%
Joseph P. Pina	1.50%	Joseph P. Pina	0.05%
Esther Schuler	1.00%	Esther Schuler	0.03%
David B. Kahan	0.50%	David B. Kahan	0.02%
James Block	0.50%	James Block	0.02%
Applied Liberty Harbor North, LLC	50.00%	TOTAL OF IRONSTATE ENTITIES	50.00%
Sole Member:			
Ironstate Holdings LLC			
Members:		Members:	
David Barry	21.88%	David Barry	21.88%
Michael Barry	21.88%	Michael Barry	21.88%
Lisa Barry	6.25%	Lisa Barry	6.25%

# NEW TIC OWNERSHIP - DETAIL

GRAND LHM URBAN RENEWAL LLC		3.00%
S/K Liberty Harbor North Associates, LLC		1.50%
Manager:		
Major Investment Corp.		
Shareholder:		
Officers:		
Murray Kushner	President/Treasurer	
Jonathan Kushner	Vice President/Secretary	
Members:		
Murray Kushner	21.50%	0.32%
The Jonathan C. Kushner Revocable Trust	24.00%	0.36%
Aryeh Kushner	4.00%	0.06%
Jonathan Kushner Trust II	7.00%	0.11%
Jonathan Kushner Trust II	7.00%	0.11%
Marc S. Seiwitz Kushner Trust I	7.00%	0.11%
Melissa L. Seiwitz Kushner Trust II	7.00%	0.11%
48 Maybury LLC	12.50%	0.19%
Charles Scheffman	3.00%	0.05%
Jessie Purita	3.00%	0.05%
Ethan Schuker	2.00%	0.03%
David B. Kahn	1.00%	0.02%
James Block	1.00%	0.02%
Applied Liberty Harbor North, LLC		1.50%
Sole Member:		
Corporate Holdings, LLC		
Members:		
David Barry	43.75%	0.66%
Michael Barry	43.75%	0.66%
Lisa Barry	12.50%	0.19%

KRE-18 PARK URBAN RENEWAL ASSOCIATES, LLC		48.50%
(Wholly owned subsidiary of S/K 281 Fifth Avenue Associates, LLC)		
Manager:		
Major Investment Corp.		
Shareholder:		
Officers:		
Murray Kushner	President/Treasurer	
Jonathan Kushner	Vice President/Secretary	
Members:		
M. Kushner Investment Fund, LLC	83.33%	20.43%
Murray Kushner	50.00%	12.22%
Aryeh Kushner Trust I	12.34%	3.00%
Jonathan Kushner Trust II	12.34%	3.00%
Marc S. Seiwitz Kushner Trust I	12.34%	3.00%
Melissa L. Seiwitz Kushner Trust II	12.34%	3.00%
The Jonathan C. Kushner Revocable Trust	16.67%	4.08%

18 PARK ACQUISITION URBAN RENEWAL, LLC		48.50%
(Wholly owned subsidiary of Fifth Third Bank, LLC)		
Manager:		
Corporate Holdings, LLC		
Members:		
David Barry	43.75%	21.22%
Michael Barry	43.75%	21.22%
Lisa Barry	12.50%	6.06%

OFFICE

GLENPOINTE CENTRE WEST  
500 FRANK W. BURR BLVD. SUITE 31  
TEANECK, NEW JERSEY 07666  
T: 201.928.1100 F: 201.928.0588  
WWW.DECOTIISLAW.COM

DIRECT

MATTHEW C. KARRENBERG, ESQ.  
MKARRENBERG@DECOTIISLAW.COM  
201.907-5279

September 3, 2014

Via Overnight and Electronic Mail

Diana Jeffrey  
City of Jersey City  
City of Hall  
280 Grove Street, 3<sup>rd</sup> Floor  
Jersey City, NJ 07302

Re: Grand LHN I Urban Renewal – City of Jersey City, New Jersey  
18 Park Avenue f/k/a 175 Luis Marin Boulevard

Dear Ms. Jeffrey:

As set forth in my prior communication of August 8, 2014, the principals of Grand LHN I Urban Renewal, LLC (“Grand”) are restructuring the ownership of the above referenced property such that two (2) newly formed UREs will become tenant in common owners along with Grand. As requested in our subsequent meeting of August 28, 2014, enclosed please find the following:

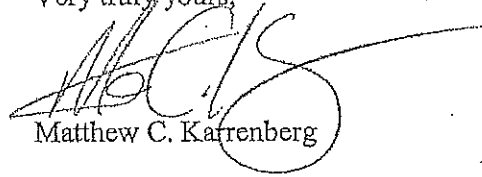
1. Letter from Jeffrey Persky describing the proposed structure;
2. The Tenancy in Common Agreement in final form;
3. Copy of a check in the amount of \$9,500 representing the application fee. The check will be delivered to the City tomorrow, September 4, 2014; and
4. At the request of Grand, and for your information, a copy of a memorandum to Grand from my Firm regarding the proposed ownership of the property as tenants in common.

In accordance with Section 9.1 of that certain Financial Agreement, dated June 13, 2012, by and between Grand and the City, Grand hereby requests the City’s Council’s approval of the subject transfers at the earliest possible convenience.



Please let me know any comments or if you need any further information.

Very truly yours,



Matthew C. Kafrenberg

Via Email Only

cc Grand LHN I Urban Renewal  
Jeremy Farrell, Esq., Corporation Counsel  
Michael R. DeCotiis, Esq.

**GRAND LHN I URBAN RENEWAL LLC**  
520 U.S. Highway 22, P.O. Box 6872  
Bridgewater, NJ 08807

Telephone: (908) 725-8100

Fax: (908) 575-2237

September 3, 2014

Diana Jeffrey, Esquire  
City of Jersey City  
280 Grove Street, Suite 202  
Jersey City, New Jersey 07302-5230

Re: 18 Park Avenue, Jersey City, New Jersey (the "Property")

Dear Ms. Jeffrey:

In connection with our request for the City's approval for a transfer of ownership relating to the Property, the following is an explanation for the proposed structure related to the KRE Group and Ironstate's respective investments in the Property with 1031 Exchange proceeds.

The KRE Group and Ironstate each have a separate affiliate (each an "Affiliate") which recently sold a real estate interest in connection with a like-kind exchange under Section 1031 of the Internal Revenue Code (the "1031 Exchange"), and each has sale proceeds from such transaction held by a "qualified intermediary" for purposes of the 1031 Exchange. In a 1031 Exchange transaction, the seller is allowed to defer any gain from such sale provided that the seller has reinvested the sale proceeds into another qualified "like-kind" property.

One of the main requirements for a 1031 Exchange is that the seller who sold the real estate interest must use the sale proceeds to purchase qualifying "like-kind" replacement properties. Membership interests in a limited liability company are not like-kind replacement properties for 1031 Exchange purposes.

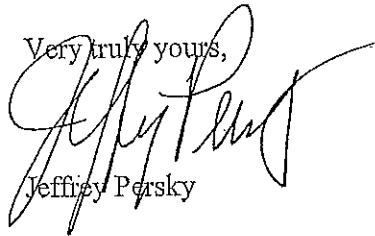
The KRE Group and Ironstate Affiliates wish to use the proceeds from their respective 1031 Exchanges to reinvest in the Property. In order to qualify as a 1031 Exchange, each must use such 1031 Exchange proceeds to purchase real estate interests (including tenant in common interests) rather than membership interests in a limited liability company. Each Affiliate created an urban renewal entity to facilitate such purchases. They are KRE 18 Park Urban Renewal LLC and 18 Park Acquisition Urban Renewal LLC. The ownership of the Property will be governed by a Tenancy in Common Agreement, a copy of which is attached hereto. This Agreement will

be executed on the date Grand LHN I conveys interests to KRE 18 Park Urban Renewal LLC and 18 Park Acquisition Urban Renewal LLC. Please note that this agreement is in final form. Please refer to the "Manager" definition to confirm that Grand LHN I will be the manager of the Property, as well as Section 9 of the agreement, which outlines the duties of the manager. Finally, please refer to Section 16 for protective provisions that have been incorporated into the Tenancy in Common Agreement at your request.

Please be assured that the purpose of this transaction is no way to reduce the financial obligations set forth in the Amended and Restated Financial Agreement between the City and Grand LHN I Urban Renewal LLC dated June 13, 2012.

Please contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey Persky", written over the typed name.

Jeffrey Persky

JP/lm

Enclosure



## TENANCY IN COMMON AGREEMENT

{18 Park Avenue, Jersey City, NJ}

THIS AGREEMENT made effective as of \_\_\_\_\_, 2014, by and among **GRAND LHN I URBAN RENEWAL LLC**, a New Jersey limited liability company, having an address at 520 U.S. Highway 22, PO Box 6872, Bridgewater, NJ 08807 (hereinafter "**LHN**"), **KRE 18 PARK URBAN RENEWAL LLC**, a New Jersey limited liability company, having an address at 520 U.S. Highway 22, PO Box 6872, Bridgewater, NJ 08807 (hereinafter "**KRE**"), and **18 PARK ACQUISITION URBAN RENEWAL LLC**, a New Jersey limited liability company, having an address at 50 Washington Street, Hoboken, New Jersey 07030 (hereinafter "**ACQUISITION**").

In consideration of the mutual covenants herein contained and other good and valuable consideration, it is mutually agreed as follows:

### **1. Definitions.**

**Agreement.** The term "Agreement" means this Tenancy in Common Agreement, as the same from time to time may be amended, modified, supplemented or restated.

**Approved Loan.** The term "Approved Loan" means any loan which is secured by the Property or by any interests in the Tenants in Common of the Property and is approved by all of the Tenants in Common, including, without limitation, that certain loan made by PNC Bank, National Association, to the Tenants in Common in the original principal amount of \$111,000,000.00, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**Business of the Property.** The term "Business of the Property" shall mean the business and operation of the Property and those actions customarily performed in connection with the business and operation of the Property.

**Capital Receipts.** The term "Capital Receipts" shall mean the cash proceeds (minus any expenses) from (i) the sale or refinancing of all or any portion of the Property, (ii) the condemnation of or taking by power of eminent domain of all or substantially all of the Property, or (iii) title or fire and extended coverage insurance on the Property, to the extent that the proceeds are not used to construct, repair or replace the Property.

**Code.** The terms "Code" means the Internal Revenue Code of 1986, as amended, or any corresponding provision of this Agreement.

**Gross Cash Receipts.** The term "Gross Cash Receipts" shall mean all receipts from the conduct of the Business of the Property, with the exception of (i) Capital Receipts, (ii) contributions and loans or advances made by the parties or any other person or entity and (iii) any unforfeited tenant security deposits deposited by tenants of the Property.

**Manager.** The term "Manager" shall mean the manager(s) of the Property,

including any additional or successor Manager(s). The Manager of the Property as of the execution of this Agreement is LHN.

**Net Cash Flow.** The term "Net Cash Flow" shall mean Gross Cash Receipts less Operating Expenses.

**Operating Expenses.** The term "Operating Expenses" shall mean (i) all expenditures of any kind relating to the Property made by the Manager, including, but not limited to, any management fee, taxes, insurance, escrow payments, repair and maintenance expenses, expenditures made for capital improvements and replacements to the extent such expenditures exceed the net proceeds of any loans relating thereto, accountants' and attorneys' fees, real estate commissions with respect to leasing of space, lease payments, amortization payments of principal and interest and all other fees and charges paid with respect to the indebtedness of the Property (whether secured or not).

**Person.** The term "Person" shall mean individual, corporation, partnership (general or limited), association, limited liability company, trust, estate or other entity,

**Pro Rata Share.** The term "Pro Rata Share" shall mean three percent (3%) for LHN, forty-eight and one-half percent (48.5%) for KRE and forty-eight and one-half percent (48.5%) for ACQUISITION.

**Property.** The term "Property" shall mean Master Unit 1 and Master Unit 2 within the 18 Park Condominium located at 18 Park Avenue, Jersey City, NJ, including any buildings, improvements, condominiums and all appurtenant easements, covenants, permits, licenses, approvals and other rights appurtenant thereto.

**Tenant in Common or Tenants in Common.** The term "Tenant in Common" or "Tenants in Common" shall mean LHN, KRE and ACQUISITION, or either of them, and their respective heirs, successors and assigns, as the context may indicate, for so long as they shall own a Tenant in Common Interest.

**Tenant in Common Interest.** The term "Tenant in Common Interest" shall mean each of the undivided three percent (3%) tenant in common interest in the Property owned by LHN, the undivided forty-eight one-half percent (48.5%) tenant in common interest in the Property owned by KRE and the undivided forty-eight and one-half percent (48.5%) tenant in common interest in the Property owned by ACQUISITION.

**Transfer.** The term "Transfer" shall mean give, sell, assign, transfer, pledge, encumber, bequeath, partition or otherwise voluntarily or involuntarily dispose, whether pursuant to operation of law, court order, levy, attachment or otherwise.

2. **Tenants in Common.** Each of LHN, KRE and ACQUISITION hereby agrees that it shall hold title as tenants in common to the Property. With regard to the ownership and operation of the Property, their relationship shall be as tenants in common and not as partners nor joint venturers, with all the rights and privileges of such relationship in accordance with the laws

of the State of New Jersey subject, however, to the terms and conditions hereinafter set forth in this Agreement. The Tenants in Common shall have no authority to file a partnership or corporate tax return, conduct business under a common name, execute any agreement which identifies either or both of them as partners, shareholders, or members of a business entity, or otherwise hold themselves out as a partnership or other form of business entity (or as partners, shareholders or members of a business entity). It is the intention of the parties that the laws of the State of New Jersey shall govern and control the rights of the parties pursuant to this Agreement and the ownership of the Property. At no time shall the number of tenants in common of the Property exceed thirty-five (35) persons. For purposes of determining the number of tenants of common holding title to the Property, spouses shall be treated as a single person and all persons who acquire interests from a Tenant in Common by inheritance shall be treated as a single person.

During the term of this Agreement, the Tenants in Common authorize LHN (the "TIC Representative") to coordinate, on each Tenant in Common's behalf, communications between the Tenants in Common and any lender (a "Lender") in connection with an Approved Loan. Each Tenant in Common hereby authorizes the TIC Representative to be the only party that a Lender need notify or provide written notice or other communication pursuant to the terms, conditions, and provisions of any loan document executed in connection with any Approved Loan, including any modifications, amendments, renewals, and extensions of said loan documents (collectively, the "Loan Documents"). Any such notice shall be valid and effective under said Loan Documents as though given to all of the Tenants in Common. The TIC Representative shall provide a copy of any notice or communication from any Lender to the Tenants in Common, but failure to do so will not alter the effect of such notice. The TIC Representative may be replaced upon the appointment of a new representative by the Tenants in Common owning more than 50% of the Tenant in Common Interest, provided that so long as any Approved Loan remains outstanding (i) said replacement representative is a Tenant in Common, and (ii) the Tenants in Common have previously provided written notice to each existing Lender setting forth (A) the effective date of said replacement and (B) the identity and contact information for the replacement representative.

3. **Partnership Not Created.** This Agreement shall not be construed as creating a partnership or joint venture between the Tenants in Common. No act or conduct of any party shall be binding upon any other party, except to the extent that such act or conduct is either approved by each party in writing or expressly authorized or provided for herein.

4. **Outside Activities.** No provision contained in this Agreement shall be construed or deemed to restrict in any way the freedom of any party to invest in any other parcel of real estate or to conduct other business or activities including, without limitation, by specification, the acquisition, development, leasing, sale, operation or management of real property, without accountability to any other party even if such investment, business or activity is similar to the activities contemplated by this Agreement.

5. **Limitation of Activities of Tenants in Common.** At all times, the activities of the Tenants in Common with respect to the Property shall be limited to those customarily performed in connection with the maintenance and repair of rental real estate property as

required by Rev. Proc. 2002-22; 2002-14 I.R.B. 1 (19 Mar. 2002).

## **6. Capital Contributions and Loans.**

6.1. The parties at present anticipate that all additional necessary funds for operation of the Property will be obtained from real estate loans secured by liens on the Property and from the cash flow resulting from the leasing and operation of the Property. However, additional funds may be required in the event that financing is not available or is of an inadequate amount and/or funds from operations are insufficient to pay operating expenses. Notwithstanding the foregoing, however, in the event additional funds are necessary in the reasonable judgment of any party, excluding any moneys which may be required to pay distributions pursuant to Article 7 of this Agreement, such party may furnish its Pro Rata Share of any such funds as well as the Pro Rata Share of the other party or parties. In such event, the party advancing such funds (the "**Contributing Party**") shall be entitled to reimbursement from the other party or parties who have not contributed their Pro Rata Share (collectively, the "**Non-Contributing Party**"), such reimbursement to be made no later than twenty (20) days after receipt of notice in writing of a deficit from the Contributing Party, which notice shall be issued no more than ten (10) days after the funds were paid by the Contributing Party.

6.2. In the event the parties furnish funds pursuant to the preceding Subarticle 6.1, such funds shall not bear interest, except as provided in Subarticle 6.3 hereof, but the funds shall be repaid to the parties as provided in Article 7 of this Agreement.

6.3. In addition to the right of the Contributing Party to sue the Noncontributing Party to enforce its obligation to contribute as provided in Subarticle 6.1 hereof and for damages resulting therefrom, the Contributing Party will have the rights as provided in this Subarticle 6.3. If any party hereto fails to furnish the reimbursement funds as provided in this Article 6, the Contributing Party shall have the option of advancing the funds not contributed by the Non-Contributing Party, and in such event, the Contributing Party shall have, as security for such advance, a general lien and security interest against the Tenant in Common Interest of the Non-Contributing Party in the Property and such advances shall be repaid out of (i) distributions as provided in Subarticles 7.1 and 7.2 of this Agreement, and (ii) the proceeds of sale of the Noncontributing Party's Tenant in Common Interest. Each advance made in accordance with this Subarticle 6.3, which constitutes the Non-Contributing Party's share which the Contributing Party furnishes (together the "**Excess Contributions**") shall be evidenced by a negotiable promissory note of the Non-Contributing Party and shall bear interest at the rate equal to the lesser of (i) 10% percent per annum in excess of the general prime rate as published in the Wall Street Journal, as it is changed from time to time while the note is outstanding, or (ii) the maximum legal rate then permitted by the State of New Jersey as it may change during the term of the note, and the note shall be due and payable on demand. In the event the Non-Contributing Party fails to execute the promissory note, then the Contributing Party shall have a power-of-attorney, which shall be deemed to be coupled with an interest, to sign the promissory note on behalf of the Non-Contributing Party.

6.4. In the event the Excess Contributions and accrued interest owed by any Tenant in Common has not been repaid to the Contributing Party out of distributions pursuant to

Article 7 or by the Non-Contributing Party for a period of thirty (30) days after the date on which the Excess Contribution first occurred, then the Contributing Party will have the right to enforce its lien against the Non-Contributing Party's Tenant in Common Interest in one or more of the following manners as selected by the Contributing Party.

6.4.1. Suit to obtain a judgment against the Non-Contributing Party and the enforcement of any judgment obtained against any or all of its assets; or

6.4.2. Legal proceedings to force the sale or transfer of beneficial ownership of the Non-Contributing Party's Tenant in Common Interest in the Property in such a manner as to avoid a default or acceleration of payment of principal pursuant to the first mortgage lien then encumbering the Property.

The proceeds of sale of the Tenant in Common Interest shall be applied (i) first to reimburse the Contributing Party for reasonable expenses incurred relating to the sale, (ii) then to the Contributing Party to repay the Excess Contributions plus accrued interest, and (iii), then the balance to the Non-Contributing Party.

6.5. Notwithstanding any provisions of this Agreement to the contrary, including the provisions of this Article 6, other than as may be set forth in Section 16 hereof, the liabilities of the parties pursuant to this Agreement, including any obligation for reimbursement of the Excess Contribution, shall be limited to their respective Tenant in Common Interests in the Property and any excess or deficiency judgment shall be enforced and payable out of their respective Tenant in Common Interests in the Property and not against the other assets of the parties nor against their members, managers, trustees or other principals or beneficiaries.

7. Distributions. After deducting any reasonable amounts required to maintain reserves to pay anticipated expenses, including taxes, insurance, capital repairs and replacements and such other expenses or costs, debts and obligations incident to the ownership of the Property, and after payment of debts and obligations of the Property (other than loans to unrelated third parties), all Net Cash Flow and Capital Receipts of the Property shall be distributed to the parties in the manner provided in Subarticles 7.1 and 7.2 of this Agreement in accordance with their respective Tenant in Common Interests within three (3) months of the date of the receipt of such Net Cash Flow and Capital Receipts by the Manager.

7.1. The Net Cash Flow of the Property shall be allocated and distributed among the parties in the manner and order of priority as follows:

7.1.1 First, to Tenants in Common in an amount equal to Excess Contributions and accrued interest on loans as provided in Subarticle 6.3 of this Agreement;

7.1.2 Second, to Tenants in Common in an amount equal to the amount of funds furnished by the parties as provided in Subarticle 6.1 of this Agreement; and

7.1.3 Third, the balance, if any, to the Tenants in Common in accordance with their Tenant in Common Interests.

7.2 Capital Receipts of the Property shall be allocated and distributed in the manner and order of priority as follows:

7.2.1 First, to the Tenants in Common in an amount equal to Excess Contributions and accrued interest on loans as provided in Subarticle 6.3 of this Agreement, pro rata in proportion to the principal balance of each such Excess Contribution;

7.2.2 Second, to the Tenants in Common in an amount equal to the amount of funds furnished by the parties as provided in Subarticle 6.1 of this Agreement, pro rata in proportion to the amount contributed by each Tenant in Common;

7.2.3 Third, the balance, if any, to the Tenants in Common in accordance with their Tenant in Common Interests.

## **8. Rights of Tenants In Common.**

8.1 Except as otherwise provided herein, each Tenant in Common shall have the right to Transfer its Tenant in Common Interest without the consent of the other Tenant in Common, subject to any restrictions contained in any existing Loan Documents. Notwithstanding anything contained in this Article 8 to the contrary, if a lender requires that certain restrictions be placed on the rights of the Tenants in Common to Transfer their respective Tenant in Common Interests in the Property, which are consistent with customary commercial lending practices, the Tenants In Common shall agree to the imposition of such restrictions on their rights to Transfer their respective Tenant in Common Interests in the Property.

### **8.2 Voluntary Transfer to Unrelated Party.**

Notwithstanding anything to the contrary herein (but subject to any restrictions contained in any loan documents evidencing or securing any Approved Loans), if a Tenant in Common (or any trustee, liquidator, receiver, trustee in bankruptcy, debtor-in-possession under the bankruptcy laws or similar authority having control over such Person or its assets) wishes to make a voluntary sale of all or a part of its Tenant in Common Interest to a person that is not a Related Person (as defined below), the transferring Tenant in Common shall give the other Tenants in Common a notice (a "Sale Notice") setting forth the name of the prospective purchaser (and if it is an entity, its beneficial ownership) and the terms and conditions of the proposed sale. The other Tenants in Common shall, for a period of thirty (30) days after receiving the Sale Notice (the "Option Period"), have a right of first refusal to acquire the interests proposed to be transferred of the transferring Tenant in Common on the same terms and conditions as set forth in the Sale Notice. The exercise of the right of first refusal shall be made by a written notice (the "Acceptance Notice") to the transferring Tenant in Common. If more than one of the other Tenants in Common exercises its right of first refusal, such other Tenants in Common shall acquire the interests of the transferring Tenant in Common in proportion to their respective Pro Rata Shares. If the right of first refusal under this Subarticle is not exercised by any of the other Tenants in Common during the Option Period or if timely exercised, the closing does not occur within thirty (30) days of the date of an Acceptance Notice, the transfer described in the Sale Notice may be consummated,

provided such closing occurs within sixty (60) days after the expiration of the Option Period on terms and conditions no less favorable in any material respect to the prospective purchaser than the terms and conditions set forth in the Sale Notice; otherwise the transferring Tenant in Common shall be required to reinstate the procedures required under this Subarticle.

### 8.3 Involuntary Transfer to Unrelated Party

(i) Notwithstanding anything to the contrary herein (but subject to any restrictions contained in any loan documents evidencing or securing any Approved Loans), if a Tenant in Common (or any trustee, liquidator, receiver, trustee in bankruptcy, debtor-in-possession under the bankruptcy laws or similar authority having control over such Person or its assets) transfers all or a portion of its Tenant in Common Interest (a "Subject Interest") to a Person (the "Transferee") that is not a Related Person other than in a voluntary sale subject to Subarticle 8.2 hereof, the other Tenants in Common shall have the option to purchase all or any part of the Subject Interest at the price determined in accordance with Subarticle 8.3(iv) hereof and on the terms set forth in Subarticle 8.3(v) hereof, and the Transferee shall have the unconditional obligation to sell such Subject Interest at such price and on such terms. The other Tenant(s) in Common exercising the option under this Subarticle 8.3(i) shall be hereinafter referred to as a "Purchasing Owner." After any Tenant in Common determines that there has been a transfer subject to this Subarticle 8.3(i) (a "Triggering Event"), it may give the other Tenants in Common notice of such Triggering Event.

(ii) The option to purchase the Subject Interest from the Transferee under Subarticle 8.3(i) hereof shall be exercised by written notice (the "Trigger Notice") to (A) the Transferee and (B) the other Tenants in Common. Such Trigger Notice shall be delivered by any Tenant in Common to the other Tenants in Common within ninety (90) days after the notice of the Triggering Event.

(iii) If there is more than one Purchasing Owner, the Purchasing Owners shall have the right to purchase the Subject Interest in proportion to their Pro Rata Share or in such other proportions as such Purchasing Owners shall agree.

(iv) In the event of a purchase of the Subject Interest pursuant to the exercise of the option under this Subarticle 8.3, the option price shall be the fair market value of such Subject Interest at the time of the transfer, determined under this Subarticle 8.3(iv).

(A) The fair market value of the Subject Interest initially shall be separately determined by the Purchasing Owners and the Transferee who shall each submit their determinations to a mutually acceptable attorney within the period commencing on the date of the Trigger Notice and ending on the date ninety (90) days thereafter (the "Initial Determination Period").

(I) The determination of the fair market value by the Purchasing Owners is referred to as the "Purchasing Owners' Determination." If there is more than one Purchasing Owner, then the Purchasing Owners' Determination shall be the sum

of each of the Purchasing Owners' Determinations of fair market value multiplied in each case by the percentage of the Subject Interest to be acquired by such Purchasing Owner.

(II) The determination of the fair market value by the Transferee is referred to as the "**Transferee's Determination.**"

(III) The designated attorney shall distribute to the Purchasing Owners and the Transferee the Purchasing Owners' Determination and the Transferee's Determination upon the earlier of receiving all of the Determinations or the end of the Initial Determination Period.

(B) If the Purchasing Owners shall fail to timely submit the Purchasing Owners' Determination, then the Purchasing Owners will be deemed to have not exercised their option to acquire the Subject Interest. If the Purchasing Owners shall timely submit the Purchasing Owners' Determination and the Transferee shall fail to timely submit the Transferee's Determination, then the fair market value of the Subject Interest shall be deemed to be the Purchasing Owners' Determination.

(C) If the Purchasing Owners and the Transferee each timely submit their Determinations and the Transferee's Determination is not less than 95% of the Purchasing Owners' Determination and not more than 105% of the Purchasing Owners' Determination, then the fair market value of the Subject Interest shall be deemed to be the average of the Purchasing Owners' Determination and the Transferee's Determination.

(D) If the Purchasing Owners and the Transferee each timely submit their Determinations, Subarticle 8.3(iv)(C) hereof does not apply, and the parties cannot agree on the fair market value of the Subject Interest within thirty (30) days after the distribution of the Determinations under Subarticle 8.3(iv)(A)(III) hereof (such thirty (30) day period being hereafter referred to as the "**Resolution Period**"), then the dispute shall be resolved by an arbitration conducted in Northeast, New Jersey in accordance with the real estate valuation arbitration rules of the American Arbitration Association ("AAA") in effect on the date hereof, except that the provisions of this Subarticle 8.3(iv)(D) shall apply to the conduct and determination of such arbitration and shall supersede any conflicting or inconsistent provisions of said real estate valuation arbitration rules.

(I) The Purchasing Owners and the Transferee shall each appoint their own arbitrator within forty-five (45) days after the expiration of the Resolution Period. If either the Purchasing Owners or the Transferee shall fail to timely appoint an arbitrator, the appointed arbitrator shall select the second arbitrator, who shall be impartial, within fifteen (15) days after such party's failure to appoint. Each of the two (2) arbitrators selected shall choose either the Purchasing Owners' Determination or the Transferee's Determination, and shall, within fifteen (15) days after the appointment of the last of such two (2) arbitrators, notify each other and the Purchasing Owners and the Transferee of their respective choices. Such two (2) arbitrators shall then have twenty (20) days after receipt of notice of the other's choice to confer with each other and to attempt to reach an agreement as to whether the Purchasing Owners' Determination or the Transferee's Determination constitutes the fair market value of the Subject Interest. If such two (2) arbitrators shall concur as to whether the



Purchasing Owners' Determination or the Transferee's Determination constitutes the fair market value of the Subject Interest, they shall immediately notify the Purchasing Owners and the Transferee of such concurrence and such concurrence shall be final and binding upon the Purchasing Owners and the Transferee. If such two (2) arbitrators shall fail to concur, then such two (2) arbitrators shall immediately designate a third arbitrator who shall be impartial. If such arbitrators fail to do so, then either the Purchasing Owners or the Transferee may request the AAA to appoint an arbitrator who shall be impartial within twenty (20) days of such request and both the Purchasing Owners and the Transferee shall be bound by any appointment so made within such 20-day period. If no such third arbitrator shall have been appointed within such twenty (20) days, either the Purchasing Owners or the Transferee may apply to any court having jurisdiction to make such appointment.

(II) The third arbitrator only shall subscribe and swear to an oath fairly and impartially to determine such dispute. The third arbitrator shall conduct such hearings as he deems appropriate (or such hearings as either the Purchasing Owners or the Transferee shall request). Within fifteen (15) days after the third arbitrator has been appointed, such third arbitrator shall choose the Purchasing Owners' Determination or the Transferee's Determination, and such choice by the third arbitrator shall be final and binding upon the Purchasing Owners and the Transferee.

(III) The fees and expenses of any arbitration of the determination of the fair market value of the Subject Interest for purposes of this Subarticle 8.3(iv)(D) shall be borne by the Purchasing Owners on the one hand and the Transferee on the other hand equally, but each shall bear the expense of its own arbitrator, attorneys and experts and the additional expenses of presenting its proof

(IV) The Purchasing Owners and the Transferee shall each have the right to submit such data and memoranda to each of the arbitrators in support of their respective positions as they may deem necessary or appropriate.

(V) Each arbitrator shall be a qualified member of the American Institute of Real Estate Appraisers (or any successor of such Institute, or if such organization or successor shall no longer be in existence, a recognized national association or institute of appraisers) who shall not be a sole practitioner, and shall have at least ten (10) years' experience in leasing and valuation of properties which are similar in character to the subject Properties.

(v) The terms for the purchase of a Subject Interest shall be as follows:

(A) The closing for a purchase of a Subject Interest under this Subarticle 8.3 shall take place at an office in New Jersey as may be designated by the Purchasing Owners.

(B) The date of the closing (the "closing date") shall be specified in a notice by the Purchasing Owners to the Transferee, which date shall be in

the forty-five (45) day period commencing on the date the fair market value of the Subject Interest is finally determined under Subarticle 8.3(iv)(D).

(C) At the closing, the Transferee shall deliver to each Purchasing Owner deeds for its portion of the Subject Interest and any other documents required to implement the transfer of such Subject Interest to said Purchasing Owner. Payment for any required documentary stamps or transfer taxes in connection with the transfer shall be made by the Transferee.

(D) At the closing, the Purchasing Owners shall deliver to the Transferee a certified check for the purchase price.

(vi) A "Related Person" shall be defined as follows:

(A) Subject to Subarticle 8.3(vi)(B) below, a "Related Person" to a Tenant in Common is a person from whom stock ownership would be attributed to the Tenant in Common or to whom stock ownership would be attributed from the Tenant in Common, under IRC Code Section 318(a), or who would be deemed related to the Tenant in Common under IRC Code Section 267 or a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is in common control with, a Tenant in Common.

(B) If the determination as to a Related Person is being made with regard to a Tenant in Common which is an estate, the determination under Subarticle 8.3(vi)(A) hereof shall be made as if the decedent were the Tenant in Common.

## **9. Powers and Duties of Manager; Tenants in Common.**

9.1 The Manager shall manage the affairs of the Property subject to the provisions of this Agreement with compensation to be paid on a monthly basis at a rate to be determined.

9.2 The Manager may, without limitation of any power or authority, and without the consent of the Tenants in Common, except as specifically provided in Subarticle 9.3, take the following actions, if, as and when they deem necessary, appropriate or advisable:

9.2.1 Collect all rentals and all other income from the Property;

9.2.2 Pay all expenses of operation of the Property;

9.2.3 Advise the parties on all matters pertaining to insurance with respect to the Property;

9.2.4 Assist the parties with regard to any legal or administrative actions or proceedings on behalf of or against the Property;

9.2.5 Maintain and operate the Property or any part or parts thereof;

9.2.6 Employ, terminate the employment of, supervise and compensate such persons, firms or corporations for and in connection with the Business of the Property or the improvement, operation, maintenance, management and leasing of the Property;

9.2.7 Repair and replace all furniture, furnishings and fixtures situated on or constituting a part of the Property;

9.2.8 Acquire such tangible personal property and intangible personal property as may be necessary or desirable to carry on the Business of the Property and sell, exchange, or otherwise dispose of such personal properties in the ordinary course of business;

9.2.9 Assist parties to obtain a policy or policies of insurance insuring the Property against any liability to the public, tenants or any other person and risk to its properties incident to the operation of the Property in such amounts and upon such terms as the Manager shall deem necessary or appropriate under the circumstances, and such policies of insurance shall name the Tenants in Common as insured as their interests appear;

9.2.10 Keep all books of account and other records of the Property;

9.2.11 Negotiate and contract with all utility companies servicing the Property;

9.2.12 To the extent that funds are available therefor, pay all debts and other obligations of the Property;

9.2.13 Coordinate the management and operation of the Property, including the performance of such functions as the collection of rent, providing utility services, cleaning, repair and maintenance services to be furnished by the parties, as landlords, under any lease, all in accordance with and as limited by this Agreement;

9.2.14 Cause to be paid all taxes, assessments, rents and other impositions applicable to the Property, using its best efforts to pay same before delinquency and prior to the addition thereto of interest or penalties and undertake when appropriate any action or proceeding seeking to reduce such taxes, assessments, rents or other impositions; and

9.2.15 Take all action required to protect the investment of the parties in the Property whenever the Manager determines that the execution of such documents, the exercise of such rights or the taking of such action is appropriate to protect the investment.

9.3 The Manager shall be prohibited from exercising any of the following powers and rights, such powers and rights may only be exercised by the Tenants in Common acting together by unanimous written consent:

9.3.1 On behalf of and in its name and the name of the parties, borrow or

lend money or make, deliver or accept any commercial paper, or execute any promissory note, mortgage, security agreement, bond or lease, or purchase or contract to purchase or sell or contract to sell any property for or of the parties;

9.3.2 Mortgage, sell, lease, exchange or otherwise transfer or convey all or part of the Property;

9.3.3 Hire a successor Manager; and

9.3.4 Negotiate a management agreement with the Manager or successor Manager or the extension or renewal of such management agreement.

9.4 To the extent that the consent of the Tenants in Common shall be required to authorize any other action with respect to the Property not expressly provided for hereunder, such consent shall be effective upon obtaining the written consent of the majority of the Tenant in Common Interests of the Tenants in Common.

9.5 Neither the Manager, nor the Tenants in Common shall be permitted to institute proceedings to be adjudicated bankrupt or insolvent, consent to the institution of bankruptcy or insolvency proceedings involving the Property, or file, or consent to, a petition seeking reorganization or relief under any applicable federal or state law relating to bankruptcy or insolvency involving the Property, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) with control over the Property.

## **10. Management of Property.**

10.1 As of the date of this Agreement, LHN has agreed to serve as Manager of the Property for a one (1) year period beginning on the date of the execution of this Agreement. In accordance with the requirements of Rev. Proc. 2002-22; 2002-14 I.R.B I (19 Mar. 2002), the provisions in this Article concerning the management of the Property by LHN may be renewed no less frequently than annually. At the end of the one (1) year period, LHN, KRE and ACQUISITION shall either (i) renew the provisions of this Article; (ii) enter into a new management agreement with each other or (iii) enter into a management agreement with a third party so long as the third party is not a lessee of the Property. In the event that LHN, KRE and ACQUISITION enter into a management agreement with a third party, such management agreement shall be renewable no less frequently than annually. The Manager may be discharged as Manager at any time for reasonable cause by either of the parties. In the event that either of the Tenants in Common or the Manager terminates or fails to renew the management provisions set forth in this Article or a successor management agreement with a third party, the Tenants in Common shall select a successor Manager by unanimous written consent. To effectuate a smooth transition, the parties agree that the former manager or owner of the Property may continue to perform certain duties of a Manager on behalf of the Tenants in Common (including collecting all rentals and paying all expenses), until such duties are fully transitioned to and assumed by the successor Manager.

**11. Books and Records.** The Manager shall keep or cause to be kept complete and accurate books with respect to the operation of the Property. The books of the Property at all

times shall be maintained as the principal office of the Manager. Each party and its duly authorized representative shall have the right to examine the books and records of the Property at reasonable prior notice to the Manager. The books of the Property shall be examined and reviewed at such intervals, as the parties shall determine but not less frequently than annually as of the end of each calendar year by the accountants then regularly retained by the parties. Such accountants shall prepare a report for each party showing the results of the operation of the Property and such information as the parties may require to prepare their respective federal and state income tax returns.

12. **Bank Accounts.** The funds relating to the Property shall be deposited in the name of the parties in such bank account or accounts as shall be designated by the Manager. The Manager shall use such funds solely for the Business of the Property. Funds shall be withdrawn from bank accounts only upon the signature of the Manager or its duly appointed designee.

13. **Proportionate Sharing of Debt.** The Tenants in Common must share in any indebtedness secured by a blanket lien on the Property in proportion to their Tenant in Common Interest in the Property.

14. **Prohibition Against Loans by Certain Related Parties.** The lender with respect to any debt which encumbers the Property or with respect to any debt incurred to acquire a Tenant in Common Interest in the Property shall not be a related person to a Tenant in Common, the Manager, or any lessee of the Property as set forth in Rev. Proc. 2002-22; 2002-14 I.R.B. 1 (19 Mar. 2002).

15. **Dissolution, Continuation and Termination.** In the event of the dissolution, assignment for the benefit of creditors or adjudication of bankruptcy, insanity or incompetency of a party ("Terminating Party"), this Agreement shall not be terminated and dissolved, but shall continue and the legal representative, heirs or devisees of the Terminating Party shall immediately succeed to the Terminating Party's Tenant in Common Interest in this Agreement and the Property. Upon the Transfer of the entire interest of any Tenant in Common, this Agreement shall be terminated subject to any restrictions contained in any existing Loan Documents.

16. **Financial Agreement.** Reference is made to an Amended and Restated Financial Agreement dated June 13, 2012, between the City of Jersey City (the "City") and LHN (the "FA"). During the pendency of the FA, the parties hereto agree as follows: This Agreement shall not, without the City Council's prior written consent, be amended in any way that would impact the FA. The parties hereto agree (i) to comply with all terms of the FA, including but not limited, to the transfer provisions set forth therein; (ii) to be jointly and severally liable to the City for all monetary and non-monetary obligations set forth in the FA; and (iii) on an annual basis, to jointly file a consolidated financial statement, which will be subject to audit at the parties' expense. LHN as Manager shall be the party responsible for making all payments set forth in the FA, for all reporting required by the FA, and shall not take a deduction for expenses incurred by the other parties hereto. Notwithstanding the foregoing, the purchase and sale of the interests herein shall not constitute a revenue or expense of any of the parties for the purpose of the annual financial statements as required pursuant to the FA. The parties hereto shall jointly

and severally assume any risks with respect to the ownership structure for the Property and shall jointly and severally hold the City harmless from any liability associated with said ownership structure.

17. Notices. Each notice, demand, consent, designation, acceptance, approval, request, opinion or other communication hereunder shall be in writing and shall be mailed in the United States, by certified mail or registered mail, postage prepaid, or sent by public courier, all charges prepaid, addressed to a party at his address set forth in the preliminary paragraph of this Agreement or to such other address as any party may designate by notice to the other parties and actually received at the address or delivery refused. Notices and all other communication hereunder shall be deemed received when either (i) actually received by the addressee or by anyone at the addressee's address, (ii) delivery is refused by the addressee or anyone at the address or (iii) no one is available at the address to accept or refuse deliver.

18. Further Assurances. All parties shall execute and deliver such other instruments and do such other acts as may be necessary to carry out the intent and purposes of this Agreement.

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws and decisions of the State of New Jersey.

20. Amendment. This Agreement may not be modified or amended except with the prior written consent of the parties. For so long as an Approved Loan is outstanding, the Tenants in Common each agree that this Agreement shall not be modified or amended without the prior express written consent of the Lender to the extent that such consent is required under the Loan Documents evidencing such Approved Loan.

21. Successors. Except as otherwise provided herein, all provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by and against the respective heirs, executors, administrators, personal representatives, successors and assigns of each signatory to this Agreement.

22. Article Headings: The Article headings herein are for convenience of reference and shall not be deemed to define, describe or limit the terms hereof.

23. Independent Counsel. Each party acknowledges that it understands that it has the right to consult with an attorney of its choice to review this Agreement and that it is encouraged to do so. Each party acknowledges that it has carefully read this Agreement and understands all of its terms. Each party also declares that it signed this Agreement knowingly, voluntarily, and after such consultation with such counsel and/or advisor as it thought appropriate and agrees to be bound by the terms of this Agreement.

24. Counterpart as an Original. This Agreement may be executed by the parties hereto in any number of counterparts hereof, and all such counterparts shall together constitute one and the same agreement. Counterparts of the signature pages hereto signed and delivered to other parties hereto via facsimile or other reliable electronic means (including emails of pdf

documents) shall for all purposes be deemed to constitute the delivery of an originally executed counterpart hereof.

{Signature Page Follows}

IN WITNESS WHEREOF, the parties have executed, sealed and delivered this Tenancy in Common Agreement as of the date set forth above.

**GRAND LHN I URBAN RENEWAL LLC**

By: S/K Liberty Harbor North Associates, LLC, Member

By: Majic Investment Corp., Manager

By: \_\_\_\_\_

Name: Murray Kushner

Title: President

By: Applied Liberty Harbor North, LLC, Member

By: Ironstate Holdings LLC, Sole Member

By: \_\_\_\_\_

Name: Michael Barry

Title: Manager

**KRE 18 PARK URBAN RENEWAL LLC**

By: S/K 281 Fifth Avenue Associates LLC, Sole Member

By: MK Members Associates LLC, Sole Member

By: Majic Investment Corp., Manager

By: \_\_\_\_\_

Name: Murray Kushner

Title: President

**18 PARK ACQUISITION URBAN RENEWAL LLC**

By: Ironstate Holdings LLC, Manager

By: \_\_\_\_\_

Name: Michael Barry

Title: Manager



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August 31, 2014

Attorney-Client Privileged Communication  
Via Electronic Mail and First Class Mail

Mr. Jeff Persky  
Grand LHN I Urban Renewal LLC  
520 U.S. Highway 22  
P.O. Box 6872  
Bridgewater, New Jersey 08807

Re: 18 Park Avenue, Jersey City, New Jersey (the "Property")

Dear Mr. Persky

You have asked whether the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et. seq. (the "LTTEL"), prohibits fee title ownership of real property by multiple urban renewal entities as tenants in common. Based upon our review of the relevant statutes and case law, we find no such express prohibition.

The Property is owned by Grand LHN I Urban Renewal LLC ("LHN"). LHN entered into that certain Amended and Restated Financial Agreement, dated June 13, 2012 (the "Financial Agreement", a copy of which is attached hereto), with the City of Jersey City (the "City"). Pursuant to the Financial Agreement, the City has, *inter alia*, granted a tax exemption for all the Improvements to be constructed on the Property in accordance with the LTTEL. See Section 2.1. LHN is currently seeking the City's consent pursuant to the terms of the Financial Agreement to transfer a portion of its interests in the Property to KRE 18 Park Urban Renewal LLC ("KRE") and 18 Park Acquisition Urban Renewal LLC ("Acquisition", and together with LHN and KRE, the "URE's") as tenants in common.

Tenancy in common is a valid and legal form of fee title ownership of real property. It has existed as a separate and distinct estate since the fourteenth century. W.S. Holdsworth, A History



of English Law 127 (3d ed. 1985). Tenancy in common is a form of concurrent ownership of real property held by two or more persons whereby each tenant has several separate interests in the land but an undivided possession of the entire estate. Roger A. Cunningham, et. al., the Law of Property § 50.01[1] at 50-4 (2d ed. 1993). As best stated by William Blackstone, "tenancies in common differ in nothing from sole estates, but merely in the blending and unity of possession." William Blackstone, Commentaries on the Laws of England 179 (Leslie B. Adams ed., 1983) (1785). In New Jersey, tenancy in common is the default tenancy for concurrent ownership. N.J.S.A. 46:3-17.

There is no express provision under New Jersey law prohibiting real property from being owned by multiple urban renewal entities as tenants on common. The New Jersey Constitution provides as follows with respect to property subject to a tax exemption:

[I]mprovements ... may be exempted may from taxation, in whole or in part, for a limited period of time during which the profits of and dividends payable by any private corporation enjoying such tax exemption shall be limited by law. The conditions of use, ownership, management and control of such improvements shall be regulated by law.

[N.J. Const. art. VIII, § III, ¶1, emphases added].

The New Jersey Constitution contains no prohibition as to the form of ownership of real property subject to a tax exemption. All it mandates is that any profits and dividends payable by any party enjoying the exemption be limited by law. The profits, dividends, use, ownership, management and control of such improvements is governed by the LTTEL.

Similarly, the LTTEL has no requirements as to the form of fee title ownership of real property. Id. What the LTTEL does require is that a project be undertaken by an urban renewal entity. N.J.S.A. 40A:20-4. The LTTEL defines project as "any work or undertaking pursuant to a redevelopment plan..." N.J.S.A. 40A:20-3(e). An urban renewal entity may purchase, lease, plan, develop, construct, alter, maintain, or operate a project. N.J.S.A. 40A:20-4. It is not uncommon for an urban renewal entity to lease, operate or manage a project without having a fee title interest.

In addition, the New Jersey Department of Community Affairs ("DCA"), the Office of the Attorney General ("Attorney General") and the Department of Treasury ("Treasury") has each approved the creation of urban renewal entities for the valid purpose of owning a project as tenants in common. The LTTEL sets forth the mandatory provisions and purposes that any entity must possess in order to qualify as an urban renewal entity. N.J.S.A. 40A:20-5. In order to confirm such qualifications, an urban renewal entity may not be established without the approval of the Commissioner of the DCA. Id. The extensive regulations, procedures, policy and application for the establishment of an urban renewal entity may be found at: [http://www.state.nj.us/dca/divisions/codes/offices/urban\\_renewal.html#2](http://www.state.nj.us/dca/divisions/codes/offices/urban_renewal.html#2)

As a practical matter, the DCA will not approve the formation of any urban renewal entity without the approval from the Attorney General and Treasury. This Firm did not participate in the process of creating the URE's; however all three URE's have been approved by the above State agencies. Each of the DCA, Attorney General and Treasury has recognized that

the ownership of a project as tenants in common is a valid purpose for the creation of an urban renewal entity. As a general rule, administrative actions by a State agency carries with it a presumption of validity, particularly when the task falls within such agency's expertise. Dougherty v. Dep't of Human Services, 91 N.J. 1, 6, 449 A.2d 1235 (1982); Texter v. Dep't of Human Services, 88 N.J. 376, 383, 443 A.2d 178 (1982), Public Interest Research Group v. State, 152 N.J. Super. 191, 203, 377 A.2d 915 (App.Div. 1977).

Furthermore, the proposed transaction does not violate any express restrictions imposed upon urban renewal entities under the LTTEL. Every urban renewal entity is subject to, *inter alia*, two notable restrictions: (i) that it not own more than one project, and (ii) that it limits its profits and dividends. N.J.S.A. 40A:20-9, 10. Based upon information and belief, no URE has any ownership interest in any other project. In addition, through the mere qualification as an urban renewal entity, each URE has limited its profits and dividends as a matter of both contract and law.

Moreover, the proposed transaction does not violate any express provisions of the Financial Agreement. Section 9.1 of the Financial Agreement allows for any transfer of the project provided certain conditions are met. This Firm is not aware of any reason why the conditions expressed in the Financial Agreement will not be satisfied. In addition, Section 2.5 of the Financial Agreement provides that "[t]he City acknowledges that the Entity may enter into future management agreements so long as such agreements are not used to reduce the City's economic benefits under this Agreement..." Pursuant to the proposed Tenancy In Common Agreement by and amongst the URE's (the "TIC Agreement"), a copy of which has been shared with the City, LHN shall be the manager of the Property. *See Sections 1, 9, 10 and 16.* As further set forth in the TIC Agreement, as well as in your correspondence to the City dated the date hereof, the URE's have committed to the City that the proposed transaction will not be used to reduce the City's economic benefits, or LHN's financial obligations, under the Financial Agreement.

A concern has been raised that ownership of real property by multiple urban renewal entities as tenants in common may be inherently impermissible given that the LTTEL refers to the term "urban renewal entity" in the singular. While not without rationale, it is unlikely that mere grammar will be dispositive of the issue. It is expected that a court would take a more pragmatic approach as it did in McClintock v. City of Trenton, 47, N.J. 102 (1966).

In McClintock, a contract entered into by an individual and a city, acting as a local redevelopment agency pursuant to the Redevelopment Agencies Law (P.L. 1949 c.306: N.J.S.A. 40:55C-1 *et seq.*, *repealed*) and the Local Housing Authority Law (P.L. 1938, c.19; N.J.S.A. 55:14A-1 *et seq.*, *repealed*), was challenged on the grounds that Article VIII, Section III, paragraph 1 of the New Jersey Constitution, as set forth *supra*, speaks only in terms of "any private corporation" and not individuals. The Court held that Article VIII, Section III paragraph 1 did not preclude the city's execution of a contract for redevelopment with an individual. *Id.* at 104. The Court went on to state that:

Though it is true, as the plaintiffs stress, that Article VIII, Section III, paragraph 1, mentions corporations but not individuals, it may be doubted that there was any deliberate design to so confine it. In any event, we are satisfied that this express

grant of constitutional power in nowise impaired the validity of the wide statutory authority afforded to the city. The legislative grant of authority to the city and the city's action pursuant thereto were well designed to serve the public health, safety or welfare, were well within the police power, and were thus wholly 'consonant with both Federal and State Constitutions. Wilson v. City of Long Branch, supra, 27 N.J., at p. 371, 142 A.2d at 843; Redfern v. Board of Com'rs of Jersey City, supra, 137 N.J.L., at p. 359, 57 A.2d 641.

Id. at 105-106.

In addition, based upon a review of Titles 40 and 40A of the New Jersey Statutes, the legislative authority granted to a governmental unit to contract with an entity generally refers to such entity as a "person, association, corporation, nation, state or agency", all in the singular. Notwithstanding, it is not uncommon practice for a governmental entity subject to such language in its authorizing statute to enter into multi-party contracts.

It is reasonable to conclude that the LTTEL does not prohibit the URE's from owning the Property as tenants in common. Tenancy in common is a legal and valid form of real property ownership. In addition, none of the New Jersey Constitution, the LTTEL or the Financial Agreement expressly prohibits such type of ownership. Furthermore, each of the DCA, Attorney General and Treasury has authorized the creation of the URE's with the express purpose of owning the Property as tenants in common. Moreover, it is expected that the URE's shall satisfy and comply with all of the provisions of the Financial Agreement and applicable law with regards to the proposed transaction.

Very truly yours,

**DeCOTIIS, FITZPATRICK & COLE, LLP.**

By: 

Matthew C. Karrenberg

Via Email Only

cc Michael R. DeCotiis, Esq.